


ARKANSAS CODE OF 1987 ANNOTATED

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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 6C 2020 Replacement TITLE 9: FAMILY LAW (CHAPTERS 1-24)

Prepared by the Editorial Staff of the Publisher

Under the Direction and Supervision of the
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Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2019 Regular Session, the 2020 First Extraordinary Session, and the 2020 Fiscal Session. Annotations are to the following sources:

- Arkansas Supreme Court and Arkansas Court of Appeals Opinions
- Federal Supplement
- Federal Reporter
- United States Supreme Court Reports
- Bankruptcy Reporter
- Arkansas Law Notes
- Arkansas Law Review
- University of Arkansas at Little Rock Law Review
- American Law Reports (ALR)

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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1A of the Code.

TITLE 9

FAMILY LAW

(CHAPTERS 25-34 IN VOLUME 6D)

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
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6. ARKANSAS DOMESTIC VIOLENCE SHELTER ACT.
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- 22-24. [RESERVED.]

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25. GENERAL PROVISIONS.
26. RIGHTS RESPECTING BUSINESS AND PROPERTY.
27. JUVENILE COURTS AND PROCEEDINGS.
28. PLACEMENT AND DETENTION PROGRAMS.
29. INTERSTATE COMPACTS.
30. CHILD ABUSE AND NEGLECT PREVENTION.
31. YOUTH SERVICES.
32. CHILD WELFARE.
33. YOUTH VIOLENCE.
34. VOLUNTARY PLACEMENT OF A CHILD.

Publisher's Notes. The term “notice” is defined for this title at § 9-14-201(8). The term “income” is defined for this title at § 9-14-201(4)(A). The terms “child sup-

port order” and “support order” are defined for this title and the rest of the Code at § 9-14-201(2).

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

[Reserved.]

CHAPTER 2

CHANGE OF NAME

SECTION.

9-2-101. Name change — Procedure.

9-2-102. Name change — Use of new name.

Cross References. Restoration of name on granting of divorce, § 9-12-318.

Effective Dates. Acts 1851, p. 72, § 4: effective on passage.

Acts 1985, No. 542, § 3: Mar. 25, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that some persons under supervision of the Department of Correction, have their names changed to avoid proper documentation of activities and to elude proper supervision and detection by law enforcement; that this places a hardship on the Department and on law enforcement officers in the State; that this Act is designed to prevent name changes of persons under supervision of the Department of Correction and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1989, No. 52, § 5: Feb. 13, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that the circuit and chancery courts should have the power, upon good cause shown, to alter or change the name of any person, even persons in the custody of the Department of Correction; that this

Act grants that power; and that this Act should be given effect immediately in order to grant the courts that power as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

RESEARCH REFERENCES

ALR. Rights and remedies of parents inter se with respect to the names of their children. 40 A.L.R.5th 697.

Circumstances Justifying Grant or Denial of Petition to Change Transsexual or

Transgender Individual's Name. 39 A.L.R.7th Art. 9 (2019).

Am. Jur. 57 Am. Jur. 2d, Name, § 16 et seq.

C.J.S. 65 C.J.S., Names, §§ 21-28.

9-2-101. Name change — Procedure.

- (a) Upon the application of any person within the jurisdiction of the court, the circuit court shall have power, upon good reasons shown, to alter or change the name of the person.

(b) When application is made to the court under this section, it shall be by petition in writing embodying the reasons for the application.

(c)(1) When allowed, the petition shall by order of the court be spread upon the record, together with the decree of the court.

(2) An appropriate order, as prescribed in this subsection, may be made by a circuit judge in vacation. This order shall have the same force and effect as if made at term time.

History. Acts 1851, §§ 1, 2, p. 72; C. & M. Dig., §§ 7756, 7757; Pope's Dig., §§ 10123, 10124; Acts 1943, No. 15, § 1;

1985, No. 542, § 1; A.S.A. 1947, §§ 34-801, 34-802; Acts 1989, No. 52, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Zakrzeski, Family Law — Petitions to Change a Minor's Surname: Arkansas Supreme Court Adopts "Clearly Erroneous" Stan-

dard of Review and Establishes Six-Factor Test (Huffman v. Fisher), 22 U. Ark. Little Rock L. Rev. 613.

CASE NOTES

ANALYSIS

In General.
Contest.
Notice.

In General.

This section is merely in affirmation and in aid of, and supplementary to, the common-law rule that one may ordinarily change his name at will, without any legal proceedings, merely by adopting another name, that the right is not limited by the ordinary rules of minority and that the section only affords another method of doing so. Carroll v. Johnson, 263 Ark. 280, 565 S.W.2d 10 (1978); Stamps v. Rawlins, 297 Ark. 370, 761 S.W.2d 933 (1988).

Contest.

Chancery court did not err in allowing mother to change names of children to name of second husband despite petition by first husband objecting to change. Clinton v. Morrow, 220 Ark. 377, 247 S.W.2d 1015 (1952).

A natural father has standing to challenge a proposed change of name of his minor child. Carroll v. Johnson, 263 Ark. 280, 565 S.W.2d 10 (1978).

Restraining order to prevent wife from changing child's name held warranted. Norton v. Norton, 268 Ark. 791, 595 S.W.2d 709 (Ct. App. 1980).

Because a child might encounter difficulties, harassment, or embarrassment from bearing the father's surname (since

the father was incarcerated in relation to the mother's death), and because the father had not made any serious attempts at visiting the child, it was in the child's best interests to change the child's surname. *Walker v. Burton*, 2011 Ark. App. 439, 384 S.W.3d 605 (2011).

Notice.

Where a petition for the name change of minor children is made by one parent,

notice must be given to the other parent, for to fail to do so is a violation of the due process clauses of both the state and federal constitutions. *Carroll v. Johnson*, 263 Ark. 280, 565 S.W.2d 10 (1978).

9-2-102. Name change — Use of new name.

Any person whose name may be so changed by judgment or decree of any of the circuit courts shall afterward be known and designated, sue and be sued, plead and be impleaded, by the name thus conferred, except that records of persons under the jurisdiction and supervision of the Division of Correction shall continue to reflect the name as committed to the division's jurisdiction and supervision by the various circuit courts of the State of Arkansas.

History. Acts 1851, § 3, p. 72; C. & M. Dig., § 7758; Pope's Dig., § 10125; A.S.A. 1947, § 34-803; Acts 1989, No. 52, § 2; 2019, No. 910, § 689.

Amendments. The 2019 amendment substituted "Division of Correction" for "Department of Correction" and "division's" for "department's".

CHAPTER 3

DOMICILE

SECTION.

- 9-3-101. Chapter supplemental.
- 9-3-102. Voting privileges unaffected.
- 9-3-103. Jurisdiction of courts.
- 9-3-104. Administration by Secretary of State.
- 9-3-105. Rules.
- 9-3-106. Qualifications to become domiciled.
- 9-3-107. Sex or marital status not a bar.
- 9-3-108. [Repealed.]
- 9-3-109. [Repealed.]
- 9-3-110. Declaration of intent — Publication of notice — Exceptions.
- 9-3-111. Petition for domicile.
- 9-3-112. Public notice of petition and final hearing.

SECTION.

- 9-3-113. Declarations of applicant.
- 9-3-114. Hearings upon petitions — Final orders.
- 9-3-115. Admission within thirty days of general election prohibited.
- 9-3-116. Admission of surviving spouse and minor children.
- 9-3-117. Duties of clerks of court.
- 9-3-118. Clerk's fees — Deposits for witness expenses.
- 9-3-119. Cancellation of certificate — Renunciation of residence and domicile.
- 9-3-120. Certified copies of papers, etc., as evidence.

Effective Dates. Acts 1941, No. 355, § 21: Mar. 26, 1941. Emergency clause provided: "Whereas, the United States Supreme Court has held that the determination of domicile is a matter of fact, since no

state has a statute definitely defining domicile, and

"Whereas, the state of Arkansas should have a statute defining domicile because people of wealth are refusing to move into

the state without being assured that their domicile would be determined to be in the state of Arkansas, and

“Therefore, an emergency is hereby declared to exist, and this act, being neces-

sary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”

RESEARCH REFERENCES

Am. Jur. 25 Am. Jur. 2d, Domicil, § 1 et seq.

C.J.S. 28 C.J.S., Domicile, § 1 et seq.

CASE NOTES

ANALYSIS

Applicability.
County Residence.

Applicability.

Chapter inapplicable where party suing for divorce was a resident domiciled in this state when the chapter took effect.

Feldman v. Feldman, 205 Ark. 544, 169 S.W.2d 866 (1943).

County Residence.

This chapter does not regulate residence as between two counties in this state. Feldman v. Feldman, 205 Ark. 544, 169 S.W.2d 866 (1943).

9-3-101. Chapter supplemental.

It is the purpose of this chapter to set up a method, in addition to all others now provided by law, for determining the establishment of residence and domicile in Arkansas.

History. Acts 1941, No. 355, § 12; A.S.A. 1947, § 34-1312.

9-3-102. Voting privileges unaffected.

Nothing in this chapter shall be construed to affect or extend the privilege of franchise to vote at any election held within the state because of having been admitted to become a resident domiciled within the state under this chapter.

History. Acts 1941, No. 355, § 6; A.S.A. 1947, § 34-1306.

9-3-103. Jurisdiction of courts.

Exclusive jurisdiction to declare a person a resident domiciled in the State of Arkansas is conferred upon the circuit courts.

History. Acts 1941, No. 355, § 4; A.S.A. 1947, § 34-1304.

9-3-104. Administration by Secretary of State.

The Secretary of State shall be the administrative officer of this chapter.

History. Acts 1941, No. 355, § 2; A.S.A. 1947, § 34-1302.

9-3-105. Rules.

The Secretary of State shall have power to make such rules as may be necessary for properly carrying into execution the various provisions of this chapter.

History. Acts 1941, No. 355, § 3; A.S.A. 1947, § 34-1303; Acts 2019, No. 315, § 701. deleted “and regulations” following “Rules” in the section heading and in the text.

Amendments. The 2019 amendment

9-3-106. Qualifications to become domiciled.

(a) Any person who is a citizen of the United States may become a resident and domiciled in the State of Arkansas.

(b) No person shall be admitted to become a resident domiciled in the State of Arkansas who has not resided in the state for at least thirty (30) days preceding his or her application for admission as a resident domiciled in the State of Arkansas.

History. Acts 1941, No. 355, §§ 1, 5; A.S.A. 1947, §§ 34-1301, 34-1305.

9-3-107. Sex or marital status not a bar.

The right of any citizen of the United States to become a resident domiciled in the State of Arkansas shall not be denied or abridged because of sex or marital status.

History. Acts 1941, No. 355, § 7; A.S.A. 1947, § 34-1307.

9-3-108. [Repealed.]

Publisher’s Notes. This section, concerning the effect of marriage to resident, was repealed by Acts 2013, No 1152, § 1.

The section was derived from Acts 1941, No. 355, § 8; A.S.A. 1947, § 34-1308.

9-3-109. [Repealed.]

Publisher’s Notes. This section, concerning the status of women who lost domicile by marriage, was repealed by

Acts 2013, No 1152, § 2. The section was derived from Acts 1941, No. 355, § 9; A.S.A. 1947, § 34-1309.

9-3-110. Declaration of intent — Publication of notice — Exceptions.

(a) Any person desiring to make a declaration of domicile under this chapter shall declare on oath before the clerk of any court authorized under this chapter to have jurisdiction, or the clerk's authorized deputy, in the county in which the person owns real estate and has resided for thirty (30) days after reaching eighteen (18) years of age, that it is his or her bona fide intention to become a resident domiciled in the State of Arkansas and that he or she renounces his or her residence and domicile in the state in which he or she was last domiciled.

(b)(1)(A) The declaration shall set forth the name, date of birth, place of birth, occupation, personal description, name of the state and address of last residence, and the state in which he or she owns real or personal property.

(B) The declaration shall also state the name of his or her spouse, the date of the spouse's birth, the place of their marriage, the name of each child and the date of each child's birth, the name of the state, and the address at the date of the declaration.

(2)(A) The declaration shall have attached a certified copy of the notice published thirty (30) days prior to the declaration renouncing domicile in the states in which he or she owned real or personal property and in which the person formerly resided.

(B) The notice shall have been given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state or states in which the notices are published.

(c)(1) No resident domiciled in the State of Arkansas in conformity with the law in force at the date of the declaration who has declared his or her intention to become a resident domiciled in this state shall be required to renew the declaration.

(2) Any person who, on or after March 26, 1941, has become a resident domiciled in this state under the provisions of the common law of the state or of § 9-12-307 shall not be required to make a declaration as provided in this chapter.

History. Acts 1941, No. 355, §§ 10, 12;
A.S.A. 1947, §§ 34-1310, 34-1312.

9-3-111. Petition for domicile.

(a)(1) Not less than ninety (90) days nor more than two (2) years after a declaration of intention has been made, the person shall make and file in duplicate a petition in writing.

(2) The petition shall be signed by the applicant in his or her own handwriting and duly verified.

(b)(1)(A) In the petition, the applicant shall state his or her full name, place of residence, street number if possible, occupation, the date and place of birth, the state where he or she last resided, the date and place of his or her first address within this state, and the

time when and place and name of the court where he or she declared an intention to become a resident domiciled in the State of Arkansas.

(B) If the applicant is married, he or she shall state the name of his or her spouse and, if possible, the spouse's place of residence at the time of filing the petition.

(C) If the applicant has children, he or she shall state the name, date, and place of birth, and place of residence of each child living at the time of filing the petition.

(2)(A) The petition shall set forth that it is his or her intention to become a resident domiciled in the State of Arkansas, that he or she renounces absolutely domicile in the state in which he or she last resided or was domiciled, and that it is his or her intention to reside permanently in the State of Arkansas.

(B) The petition shall set forth whether he or she has been denied admission as a resident domiciled in the State of Arkansas and, if so, the ground or grounds of the denial, the court in which such decision was rendered, and that the cause for the denial has since been cured or removed and shall set forth every fact material to becoming a resident domiciled in the State of Arkansas and required to be proved upon the final hearing of his or her application.

(c) The petition shall be verified by the affidavits of at least two (2) credible witnesses, who are citizens of the State of Arkansas and who state in their affidavits that they personally know the applicant to have been a resident of the State of Arkansas for a period of at least ninety (90) days continuously next prior to the date of filing of his or her petition and that they each have personal knowledge that the petitioner is a person of good moral character and that he or she is in every way qualified in their opinion to become and to be a resident domiciled in the State of Arkansas.

(d) A petition to become a resident domiciled in the State of Arkansas may be made and filed during term time or in vacation and shall be docketed the same day as filed.

(e) However, in no case shall final action be had upon a petition until at least thirty (30) days have elapsed after its filing and the posting of the notice of the petition as provided for in § 9-3-112.

History. Acts 1941, No. 355, §§ 13, 15;
A.S.A. 1947, §§ 34-1313, 34-1314.

9-3-112. Public notice of petition and final hearing.

Immediately after filing of the petition, the clerk of the court shall give notice thereof by posting in a public and conspicuous place in his or her office or in the building in which the clerk's office is situated, under an appropriate heading, the name, residence, the state in which the petitioner formerly resided, the date and place of residence in Arkansas, the tentative date for final hearing of his or her petition, and the names of the witnesses whom the applicant expects to summon in his or her behalf.

History. Acts 1941, No. 355, § 16;
A.S.A. 1947, § 34-1315.

9-3-113. Declarations of applicant.

Before he or she is permitted under this chapter to be declared a resident domiciled in the State of Arkansas, the applicant shall declare in open court that he or she is a resident of Arkansas and that Arkansas is his or her domicile, that he or she absolutely and entirely renounces residence and domicile in the state in which he or she formerly resided, and that he or she will support and defend the Constitution and laws of the United States of America and of the State of Arkansas.

History. Acts 1941, No. 355, § 14;
A.S.A. 1947, § 34-1317.

9-3-114. Hearings upon petitions — Final orders.

(a)(1) Every final hearing upon a petition to become a resident domiciled in the State of Arkansas shall be held in open court before a judge of this state.

(2) Every final order that may be made upon the petition shall be under the hand of the court and entered in full upon the records of the court.

(b)(1)(A) The clerk of the court, if the applicant requests it, shall issue a subpoena for the witnesses named by the applicant to appear upon the day set for final hearing.

(B) However, if the witnesses cannot be produced upon the final hearing, other witnesses may be summoned.

(2) At the final hearing of the petition, the applicant and witnesses shall be examined under oath in the presence of the court.

(c) The court upon proper finding shall enter a final order that the person applying to be declared a resident domiciled in the State of Arkansas has complied with the provisions of this chapter and is entitled to be declared a resident domiciled in the state, and the court shall order to be issued to the person the form of certificate of residence and domicile as shall be prescribed by the Secretary of State.

History. Acts 1941, No. 355, §§ 4, 16,
17; A.S.A. 1947, §§ 34-1304, 34-1315, 34-
1316.

9-3-115. Admission within thirty days of general election prohibited.

No person shall be admitted as a resident domiciled in the State of Arkansas under this chapter, nor shall any certificate of residence and domicile be issued by any court, within thirty (30) days preceding the holding of any general election within the state.

History. Acts 1941, No. 355, § 6; A.S.A. 1947, § 34-1306.

9-3-116. Admission of surviving spouse and minor children.

When any person who has declared his or her intention to become a resident domiciled in the State of Arkansas dies before he or she has received a certificate from the Secretary of State showing him or her to be a resident domiciled in this state, the surviving spouse and minor children of the person, by complying with the other provisions of this chapter, may become residents domiciled in the State of Arkansas without making any declaration of intention.

History. Acts 1941, No. 355, § 11; A.S.A. 1947, § 34-1311.

9-3-117. Duties of clerks of court.

(a)(1) It shall be the duty of the clerk of the court exercising jurisdiction in matters of residence and domicile to send to the Secretary of State at Little Rock, within thirty (30) days after the issuance of a certificate of residence and domicile in the State of Arkansas, a duplicate of the certificate, and to make and keep on file in his or her office a stub for each certificate so issued by him or her.

(2) On the certificate shall be entered a memorandum of all the essential facts set forth in the certificate.

(b)(1) It shall also be the duty of the clerk of the court to report to the Secretary of State, within thirty (30) days after the final hearing and decision of the court, the name of every person who was denied residence and domicile under the provisions of this chapter.

(2) The clerk shall furnish to the Secretary of State duplicates of all petitions within thirty (30) days after the filing of the petitions and certified copies of other proceedings and orders instituted in or issued out of the court affecting or relating to residence and domicile as provided for under this chapter, as may be required from time to time by the Secretary of State.

History. Acts 1941, No. 355, § 18; A.S.A. 1947, § 34-1318.

9-3-118. Clerk's fees — Deposits for witness expenses.

(a)(1) The clerk of the court exercising jurisdiction in matters provided for under this chapter shall charge, collect, and account for the following fees in each proceeding:

(A) For receiving and filing a declaration of intention and issuing a duplicate, five dollars (\$5.00);

(B) For making, filing, and docketing the petition of a person petitioning for admission under this chapter as a resident domiciled in the State of Arkansas and for the final hearing, twenty-five dollars (\$25.00); and

(C) For entering the final order and issuing certificate of residence and domicile thereunder, if granted, twenty-five dollars (\$25.00).

(2) The fees collected by the clerk of the court in the residence and domicile proceeding shall be paid into the county general fund.

(b)(1) In addition to the fees required by this section and upon the filing of the petition to become a resident domiciled in the State of Arkansas, the petitioner shall deposit with, and pay to, the clerk of the court a sum of money sufficient to cover the expenses of subpoenaing and paying the legal fees of any witnesses for whom he or she may request a subpoena.

(2) Upon the final discharge of the witnesses, the witnesses shall receive, if they demand from the clerk, the customary and usual fees from the moneys that the petitioner shall have paid to the clerk for such purposes. The residue, if any, shall be returned by the clerk to the petitioner.

History. Acts 1941, No. 355, § 19;
A.S.A. 1947, § 34-1319.

9-3-119. Cancellation of certificate — Renunciation of residence and domicile.

(a)(1) It shall be the duty of the prosecuting attorney of a county, upon affidavit showing good cause, to institute proceedings in any court having jurisdiction under this chapter for the purpose of setting aside and cancelling any certificate issued under this chapter on the ground of fraud or on the ground that the certificate was illegally procured.

(2)(A) In any such proceeding, the party holding the certificate alleged to have been fraudulently or illegally procured shall have sixty (60) days' personal notice in which to make answer to the petition of the State of Arkansas.

(B) If the holder of the certificate is absent from the state or from the district in which he or she last had residence, the notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the state.

(3) If any person who secures a certificate of residence and domicile under the provisions of this chapter shall, within two (2) years after the issuance of the certificate, cease to reside in the state more than thirty (30) days in any one (1) year, it shall be considered prima facie evidence of a lack of intention on the part of the person to become a permanent resident of the state at the time of the filing of the application for a certificate of residence and domicile and, in the absence of contrary evidence, it shall be sufficient evidence, in the proper proceeding, to authorize the cancellation of his or her certificate of residence and domicile as fraudulent.

(b)(1) Not less than two (2) years after a certificate of residence and domicile has been issued under this chapter, the person to whom the certificate has been issued may file a petition signed in duplicate in his or her own handwriting, duly verified, which shall state his or her full

name, his or her place of residence with the street number, if possible, his or her occupation, his or her date and place of birth, the state in which he or she intends to reside, the date and place of his or her first address within this state, the time when and place and name of the court where he or she declared his or her intention to become a resident domiciled in the State of Arkansas, and the name of the court where he or she received his or her certificate of residence and domicile. If married, he or she shall state the name of his or her spouse, his or her place of residence at the time of filing this petition, and if he or she has children, the name, date, and place of birth, and place of residence of each child living at the time of filing this petition.

(2) The petition shall set forth that he or she renounces absolutely his or her residence and domicile in the State of Arkansas and that it is his or her intention to reside permanently in a state other than Arkansas.

(c)(1) Whenever a certificate of residence and domicile is set aside or cancelled as provided in this section, the court in which the judgment or decree is rendered shall make an order cancelling the certificate and shall order a certified copy of the judgment sent to the Secretary of State.

(2)(A) If the certificate was not originally issued by the court making the order, the court shall direct the clerk of the court to transmit a copy of the order and judgment to the court out of which the certificate of residence and domicile was originally issued.

(B) It shall be the duty of the clerk of the court receiving the certified copy of the order and judgment of the court to enter the certified copy of the order and judgment of record and to cancel the original certificate of residence and domicile upon the records and to notify the Secretary of State of the cancellation.

History. Acts 1941, No. 355, § 20;
A.S.A. 1947, § 34-1320.

9-3-120. Certified copies of papers, etc., as evidence.

Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this chapter shall be admitted in evidence equally with the originals in any and all proceedings under this chapter and in all cases in which the originals might be admissible as evidence.

History. Acts 1941, No. 355, § 3; A.S.A.
1947, § 34-1303.

CHAPTER 4

ARKANSAS DOMESTIC PEACE ACT

SECTION.
9-4-101. Title.

SECTION.
9-4-102. Definitions.

SECTION.

9-4-103. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

9-4-104. Receipt of money.

9-4-105. Disbursement of funds.

9-4-106. Program requirements.

SECTION.

9-4-107. Fiscal requirements.

9-4-108. Training requirements.

9-4-109. Right of entry.

9-4-110. Reports.

9-4-111. Disclosure of information.

9-4-112. Immunity from civil liability.

9-4-101. Title.

This chapter shall be known and may be cited as the “Arkansas Domestic Peace Act”.

History. Acts 2003, No. 1276, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Domestic Peace Act, 26 U. Ark. Little Rock L. Rev. 415.

9-4-102. Definitions.

As used in this chapter:

(1) “Advocate” means an employee, supervisor, or administrator of a shelter;

(2) “Commission” means the Arkansas Child Abuse/Rape/Domestic Violence Commission;

(3) “Domestic abuse” means:

(A) Physical harm, bodily injury, or assault between family or household members;

(B) The infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(C) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state;

(4) “Family or household members” means:

(A) Spouses;

(B) Former spouses;

(C) Parents;

(D) Children;

(E) Persons related by blood within the fourth degree of consanguinity;

(F) Persons who presently cohabit or in the past cohabited together; and

(G) Persons who presently have a child in common;

(5) “Shelter” means any entity that:

(A) Provides services including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor dependent children in this state; and

(B) Meets the program, fiscal, and training requirements of this chapter;

(6) “Victim” means any individual who:

(A) Is eighteen (18) years of age or older, is a minor who has his or her disabilities removed, or is a married individual under eighteen (18) years of age;

(B) Is the victim of domestic abuse; and

(C) Seeks services at a shelter; and

(7) “Volunteer” means any person who donates his or her time to provide services to victims at a shelter.

History. Acts 2003, No. 1276, § 1.

9-4-103. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(a) Regarding the administration of the Domestic Peace Fund and an entity receiving funding under this chapter, the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee, to the extent funding is appropriated and available, shall:

(1) Annually evaluate each shelter for compliance with the program, fiscal, and training requirements under this chapter;

(2) Promulgate rules, procedures, and forms for the evaluation of each shelter;

(3) Adopt a uniform system of recordkeeping to ensure the proper handling of funds by shelters;

(4) Provide training and technical assistance to shelters to ensure minimum standards of service delivery;

(5) Serve as a clearinghouse for information relating to domestic abuse; and

(6) Provide educational programs on domestic abuse for the benefit of the general public, victims, specific groups of persons, and other persons as needed.

(b)(1) The commission may enter into contracts with any entity to fulfill its duties under this chapter.

(2) The entity must meet the following requirements:

(A) The entity is organized as a statewide nonprofit corporation that provides services, community education, and technical assistance to domestic violence shelters in the state; and

(B) The entity is affiliated with one (1) or more of the following:

(i) The National Coalition Against Domestic Violence;

(ii) The National Network to End Domestic Violence; or

(iii) The Battered Women’s Justice Project.

History. Acts 2003, No. 1276, § 1; 2019, No. 315, § 702.

Cross References. Domestic Peace Fund, § 19-6-491.

Amendments. The 2019 amendment deleted “regulations” following “rules” in (a)(2).

9-4-104. Receipt of money.

Under this chapter and in the administration of the Domestic Peace Fund, the Arkansas Child Abuse/Rape/Domestic Violence Commission shall not accept money or other assistance from the federal government or any other entity or person if the acceptance would obligate the State of Arkansas except to the extent that money is available in the fund.

History. Acts 2003, No. 1276, § 1.

Cross References. Domestic Peace Fund, § 19-6-491.

9-4-105. Disbursement of funds.

(a) The Arkansas Child Abuse/Rape/Domestic Violence Commission may disburse money appropriated from the Domestic Peace Fund exclusively for the following purposes:

(1) To satisfy contractual obligations made to perform its duties under this section;

(2) To make grants to shelters that meet the requirements of this section; and

(3) To compensate the commission or its designee for administration costs associated with the performance of duties under this chapter.

(b) The commission shall collect a one-percent-fee not to exceed seven thousand five hundred dollars (\$7,500) annually from the fund for administrative and operational costs incurred under this chapter.

History. Acts 2003, No. 1276, § 1.

9-4-106. Program requirements.

Every shelter shall:

(1) Develop and implement a written nondiscrimination policy to provide services without regard to race, religion, color, age, marital status, national origin, ancestry, or sexual preference;

(2) Provide a facility that is open, accessible, and staffed by an advocate or a volunteer each day of the calendar year and twenty-four (24) hours each day;

(3) Provide emergency housing and related supportive services in a safe, protective environment for victims of domestic abuse and their children;

(4)(A) Provide a crisis telephone hotline that is answered by an advocate or a volunteer who meets the training requirements under this chapter each day of the calendar year and twenty-four (24) hours each day.

(B) The crisis telephone hotline shall not be answered by an answering machine, answering service, or mobile telephone;

(5)(A) Require all advocates and volunteers who provide direct services to victims to sign a written confidentiality agreement that prohibits the release of the following:

(i) The names or other personal and identifying information about the victims who are served at the shelter; and

(ii) The names or other personal and identifying information about the family or household members of the victims who are served at the shelter.

(B) The confidentiality agreement shall not apply to advocates who testify in court.

(C) The confidentiality agreement shall not prevent disclosure from federal grant review, audit, or reporting;

(6) Develop and implement a written plan for outreach efforts to aid victims of domestic violence;

(7) Provide peer support groups for victims;

(8) Provide assistance and court advocacy for victims seeking orders of protection; and

(9) Provide training and educational information on domestic violence for professionals, community organizations, and interested individuals.

History. Acts 2003, No. 1276, § 1.

CASE NOTES

Construction.

Subdivision (1) of this section is unrelated to nondiscrimination laws and obligations and does not create protected classifications or prohibit discrimination on some basis. Rather, in its respective con-

text, the provision asks domestic-abuse shelters to develop their own nondiscrimination policies. *Protect Fayetteville v. City of Fayetteville*, 2017 Ark. 49, 510 S.W.3d 258 (2017).

9-4-107. Fiscal requirements.

Every shelter shall:

(1) Incorporate in this state as a private nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that has the primary purpose of providing services to victims of domestic abuse or domestic violence;

(2) Be governed by a board of directors;

(3) Develop and implement written personnel policies that state the shelter's employment practices;

(4) Develop and implement written procedures that conform with the uniform system of recordkeeping developed by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee to ensure proper handling of funds; and

(5) Provide the commission or its designee with statistical data that states the following:

(A) The type of services provided by the shelter; and

(B) The number of victims and children served each year.

History. Acts 2003, No. 1276, § 1.

9-4-108. Training requirements.

Every shelter shall:

(1)(A) Require each member of its board of directors to attend an orientation approved by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee within six (6) months after joining the board of directors.

(B) The orientation shall include an explanation of the dynamics of domestic violence and the role of a board member;

(2)(A) Require each advocate who provides direct services to victims to attend fifteen (15) hours of initial staff training approved by the commission or its designee.

(B) Initial staff training shall include the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

(iii) Safety planning;

(iv) Individual or group facilitation; and

(v) Proper procedure for answering the crisis telephone hotline;

(3)(A) Require each advocate who provides direct services to victims to attend ten (10) hours of continuing education annually that is approved by the commission or its designee.

(B) Continuing education shall include the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

(iii) Safety planning;

(iv) Individual or group facilitation; and

(v) The proper procedure for answering the crisis telephone hotline; and

(4)(A) Require volunteers who provide direct services to victims to attend ten (10) hours of initial training approved by the commission or its designee.

(B) Initial staff training shall include the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

(iii) Safety planning;

(iv) Individual or group victim service session facilitation; and

(v) The proper procedure for answering the crisis telephone hotline.

History. Acts 2003, No. 1276, § 1.

9-4-109. Right of entry.

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee may enter and inspect the premises of a shelter to perform

an annual evaluation or to otherwise determine compliance with this chapter.

History. Acts 2003, No. 1276, § 1.

9-4-110. Reports.

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee shall provide an annual report by October 1 of each year to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

(1) The incidence of domestic violence in this state based on information obtained from shelters under this chapter;

(2) A description of shelters that meet the requirements of and receive funding from the commission or its designee under this chapter; and

(3) The number of persons assisted by the shelters that receive funding from the commission or its designee under this chapter.

History. Acts 2003, No. 1276, § 1.

9-4-111. Disclosure of information.

Information received by the Arkansas Child Abuse/Rape/Domestic Violence Commission, its employees, or its designees through files, reports, evaluations, inspections, or otherwise shall be confidential information and shall not be disclosed publicly in a manner as to identify individuals or facilities.

History. Acts 2003, No. 1276, § 1.

9-4-112. Immunity from civil liability.

The Arkansas Child Abuse/Rape/Domestic Violence Commission, its employees, and its designees shall be immune from civil liability for performing their duties under this chapter.

History. Acts 2003, No. 1276, § 1.

CHAPTER 5

ARKANSAS CHILD SAFETY CENTER ACT

SECTION.

9-5-101. Title.

9-5-102. Statewide purpose.

9-5-103. Definitions.

9-5-104. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

9-5-105. Receipt of money.

9-5-106. Disbursement of funds.

SECTION.

9-5-107. Program requirements.

9-5-108. Access to specialized medical examinations and psychological examinations.

9-5-109. Eligibility for contracts.

9-5-110. Interagency memorandum of understanding.

9-5-111. Fiscal requirements.

SECTION.

9-5-112. Right of entry.

9-5-113. Reports.

9-5-114. Admissibility of statements by
an alleged child victim.

SECTION.

9-5-115. Immunity from civil liability.

9-5-101. Title.

This chapter shall be known and may be cited as the “Arkansas Child Safety Center Act”.

History. Acts 2007, No. 703, § 5.

9-5-102. Statewide purpose.

The statewide purpose of this chapter is to establish a program that provides a comprehensive, multidisciplinary, nonprofit, and coordinated response to the investigation of sexual abuse of children and serious physical abuse of children in a child-focused and child-friendly facility known as a “child safety center”.

History. Acts 2007, No. 703, § 5.

9-5-103. Definitions.

As used in this chapter:

(1)(A) “Child safety center” means a not-for-profit child-friendly facility that provides a location for forensic interviews and forensic medical examinations and ensures access for specialized mental health services during the course of a child maltreatment investigation.

(B) A “child safety center” is commonly known as a child advocacy center; and

(2) “Commission” means the Arkansas Child Abuse/Rape/Domestic Violence Commission.

History. Acts 2007, No. 703, § 5; 2013,
No. 568, § 1.

9-5-104. Duties of the Arkansas Child Abuse/Rape/Domestic Violence Commission.

(a) Regarding the administration of the Arkansas Children’s Advocacy Center Fund and an entity receiving funding under this chapter, the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee, to the extent funding is appropriated and available, shall:

(1) Annually evaluate each child safety center for compliance with the program, fiscal, and training requirements under this chapter;

(2) Promulgate rules and procedures to implement this chapter and the forms for the evaluation of each child safety center;

(3) Adopt a uniform system of recordkeeping and reporting to ensure the proper handling of funds by child safety centers and to ensure uniformity and accountability by child safety centers; and

(4) Provide training and technical assistance to child safety centers to ensure best practice standards for forensic interviews and forensic medical examinations.

(b) The commission may enter into contracts with any entity to fulfill its duties under this chapter.

History. Acts 2007, No. 703, § 5.

9-5-105. Receipt of money.

Under this chapter and in the administration of the Arkansas Children's Advocacy Center Fund, the Arkansas Child Abuse/Rape/Domestic Violence Commission shall not accept money or other assistance from the federal government or any other entity or individual if the acceptance would obligate the State of Arkansas except to the extent that money is available in the fund.

History. Acts 2007, No. 703, § 5.

9-5-106. Disbursement of funds.

(a) The Arkansas Child Abuse/Rape/Domestic Violence Commission may disburse money appropriated from the Arkansas Children's Advocacy Center Fund exclusively for the following purposes:

(1) To satisfy contractual obligations made to perform its duties under this section;

(2) To make grants to child safety centers that meet the requirements of this section; and

(3) To compensate the commission or its designee for administration costs associated with the performance of duties under this chapter.

(b)(1) The commission may disburse funds, to the extent appropriated and available, from the Arkansas Children's Advocacy Center Fund to a qualified medical entity or a qualified mental health entity for education, peer review, and consultation to medical service examiners and mental health service examiners qualified under this section for children interviewed and examined at the child safety centers.

(2) A medical entity selected shall have physicians who:

(A) Have:

(i) Subspecialty training in pediatric medicine, emergency medicine, pediatric gynecology, family practice, or obstetrics and gynecology; and

(ii) Specialized training in the evaluation of child sexual abuse cases;

(B) Provide initial evaluations of allegedly abused and assaulted children and adolescents, perform second opinion examinations for less experienced examiners, and review photographs and videotapes for other examiners;

(C) Hold a teaching position or a faculty position at a college of medicine and provide training and workshops on child sexual abuse-related issues;

(D) Hold membership in professional organizations on child abuse-related and neglect-related issues;

(E) Work for or are affiliated with a regional center for the medical evaluation of allegedly sexually abused children; and

(F) Regularly testify in cases of alleged child sexual abuse.

(3) A mental health entity shall have professionals who:

(A) Are licensed mental health professionals;

(B) Have:

(i) Specialized training in assessment and treatment of children and families; and

(ii) Specialized training in trauma and child abuse;

(C) Provide assessment and treatment of allegedly abused children and adolescents;

(D) Provide consultation and training for other providers and multidisciplinary teams;

(E) Hold a teaching or faculty position;

(F) Hold membership in professional organizations on child abuse-related and neglect-related issues;

(G) Work for or are affiliated with a regional center for the medical evaluation of allegedly sexually abused children; and

(H) Regularly testify in cases of alleged child sexual abuse.

History. Acts 2007, No. 703, § 5.

9-5-107. Program requirements.

Each child safety center shall:

(1) Provide a comfortable, private, child-friendly setting that is both physically and psychologically safe for diverse populations of children and their families;

(2) Be a part of a multidisciplinary team;

(3) Have a nonprofit entity responsible for program, fiscal operations established, and implement best administrative practices;

(4) Promote policies, practices, and procedures that are culturally competent;

(5) Promote forensic interviews that are:

(A) Legally sound;

(B) Of a neutral, fact-finding nature; and

(C) Coordinated to avoid duplicative interviewing;

(6) Provide or provide access to, or both, specialized medical evaluations and treatment services to all child safety center clients;

(7) Provide team discussion and information-sharing regarding the investigation, case, and status needed on a routine basis by the child and family; and

(8) Develop and implement a system for monitoring case progress and tracking case outcomes.

History. Acts 2007, No. 703, § 5.

9-5-108. Access to specialized medical examinations and psychological examinations.

(a) The child safety centers shall provide or provide access to specialized medical examinations and psychological examinations for their clients, to the extent funding is appropriated and available.

(b) Medical providers operating under this chapter shall be capable of performing:

(A) A complete medical history;

(B) An evaluation of a child or an adolescent for evidence of sexual abuse or sexual assault including photo documentation of examination findings for recognition of genital and anal findings that are clearly normal or normal variants and common patterns of healed injuries;

(C) Collection of forensic evidence;

(D) Evaluation for sexually transmitted diseases, pregnancy, and other related sexual abuse and assault;

(E) Performance of tests and treatment as appropriate; and

(F) Testimony in court as to the findings.

History. Acts 2007, No. 703, § 5.

9-5-109. Eligibility for contracts.

(a) A public entity or a nonprofit entity is eligible for a contract under § 9-5-107 if the entity:

(1) Has a signed memorandum of understanding as provided by § 9-5-110;

(2) Operates under the authority of a governing board;

(3) Participates on a multidisciplinary team of persons involved in the investigation or prosecution of child abuse cases;

(4) Has developed a method of statistical information gathering on children receiving services through the child safety center and shares the statistical information with the statewide organization, the Department of Human Services, and the Attorney General upon request;

(5) Has a volunteer program;

(6) Employs an executive director who is answerable to the board of directors of the public or nonprofit entity and who is not the exclusive salaried employee of any public agency partner;

(7) Provides for ongoing training for child safety center staff to provide best practices in forensic interviewing and medical and mental examinations to children who are examined at child safety centers; and

(8) Operates under a working protocol that includes, at a minimum, a statement of:

(A) The child safety center's mission;

(B) Each agency's role and commitment to the child safety center;

(C) The type of cases to be handled by the child safety center;

(D) The child safety center's procedures for conducting case reviews and forensic interviews and for ensuring access to specialized medical services and mental health services; and

(E) The child safety center's policies regarding confidentiality and conflict resolution.

(b)(1) The Arkansas Child Abuse/Rape/Domestic Violence Commission may waive the requirements specified in subsection (a) of this section if the commission determines that the waiver will not adversely affect the child safety center's ability to carry out its duties under this chapter.

(2) Any waiver that is granted under subdivision (b)(1) of this section shall be identified in the written contract with the child safety center.

(c) Funds shall be withheld from an established child safety center that no longer meets the standards for funding.

History. Acts 2007, No. 703, § 5.

9-5-110. Interagency memorandum of understanding.

(a) Before a child safety center may be established under this chapter, a memorandum of understanding regarding the agreement on the levels of participation of each entity shall be executed among:

(1) The Division of Children and Family Services of the Department of Human Services;

(2) The Crimes Against Children Division of the Division of Arkansas State Police;

(3) Representatives of county and municipal law enforcement agencies that investigate child abuse in the area to be served by the child safety center; and

(4) The prosecuting attorney.

(b) A memorandum of understanding executed under this section shall include the agreement on the levels of each entity's participation and cooperation in:

(1) Developing a cooperative, multidisciplinary-team approach to investigations of child abuse;

(2) Reducing, to the greatest extent possible, the number of interviews required of a victim of child abuse with the goal of minimizing the negative impact of the investigation on the child; and

(3) Developing, maintaining, and supporting, through the child safety center, an environment that emphasizes the best interests of children and that provides best practices in child abuse investigations.

(c) A memorandum of understanding executed under this section may include the agreement of one (1) or more participating entities to provide office space and administrative services necessary for the child safety center's operation.

(d) A memorandum of understanding executed under this section shall include the following provisions that:

(1) When available and appropriate during the course of a child maltreatment investigation on reports of alleged sexual abuse, and

when appropriate, alleged severe physical abuse, the child safety center shall be utilized for forensic interviews and forensic medical examinations and will ensure access for specialized mental health services; and

(2) The person who conducts the forensic interview shall be:

(A) Adequately trained in interviewing child victims; and

(B) Prepared to testify in any administrative or judicial proceeding regarding the forensic interview.

History. Acts 2007, No. 703, § 5; 2011, No. 783, § 1; 2013, No. 568, § 2.

9-5-111. Fiscal requirements.

Every child safety center shall:

(1) Incorporate in this state as a private nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on January 1, 2007, and that has the primary purpose of providing services to child victims of child abuse;

(2) Be governed by a board of directors;

(3) Develop and implement written personnel policies that state the child safety center's employment practices;

(4) Develop and implement written procedures that conform with the uniform system of recordkeeping developed by the Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee to ensure proper handling of funds; and

(5) Provide the commission or its designee with statistical data that states the following:

(A) The type of investigative services and the number of children served by each type of investigative service provided by the child safety centers;

(B) The number, race, age, and gender of the children served each year; and

(C) The outcomes of services to children provided by the child safety centers, including without limitation:

(i) The number of founded maltreatment reports; and

(ii) The number of unfounded maltreatment reports and the ratio between founded and unfounded reports for each year.

History. Acts 2007, No. 703, § 5.

9-5-112. Right of entry.

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee may enter the premises of a child safety center at any time to ensure compliance with this chapter and the rules promulgated by the commission under this chapter.

History. Acts 2007, No. 703, § 5.

9-5-113. Reports.

The Arkansas Child Abuse/Rape/Domestic Violence Commission or its designee shall provide an annual report by March 1 of each year to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

(1) The incidence of child abuse in this state based on information obtained from child safety centers under this chapter;

(2) A description of child safety centers that meet the requirements of and receive funding from the commission or its designee under this chapter;

(3) The number of children receiving investigative services by the child safety centers that receive funding from the commission or its designee under this chapter; and

(4) Outcome data provided by the child safety centers.

History. Acts 2007, No. 703, § 5.

9-5-114. Admissibility of statements by an alleged child victim.

Nothing in this chapter precludes the admissibility of statements by an alleged child victim outside the scope of the forensic interview conducted at a child safety center, provided that sufficient safeguards are present to satisfy the admissibility requirements set forth in the Arkansas Rules of Evidence, relevant case law, and constitutional requirements.

History. Acts 2007, No. 703, § 5.

9-5-115. Immunity from civil liability.

The Arkansas Child Abuse/Rape/Domestic Violence Commission and its employees in their official capacities shall be immune from civil liability for performing their duties under this chapter.

History. Acts 2007, No. 703, §§ 5, 18.

CHAPTER 6**ARKANSAS DOMESTIC VIOLENCE SHELTER ACT****SECTION.**

9-6-101. Title.

9-6-102. Definitions.

9-6-103. Establishment — Purpose and criteria.

9-6-104. Receipt of money.

9-6-105. Determination of grant awards.

9-6-106. Operational requirements of shelters receiving domestic violence shelter funds.

SECTION.

9-6-107. Fiscal requirements.

9-6-108. Training requirements.

9-6-109. Right of entry.

9-6-110. Reports.

9-6-111. Disclosure of information.

9-6-112. Privileged communications made by victim of domestic violence — Definitions.

Effective Dates. Acts 2019, No. 910, § 6346(b): July 1, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the sections of this act other than the two uncodified sections of this act preceding the emergency clause titled ‘Funding and

classification of cabinet-level department secretaries’ and ‘Transformation and Efficiencies Act transition team’ should become effective at the beginning of the fiscal year to allow for implementation of the new provisions at the beginning of the fiscal year. Therefore, an emergency is declared to exist, and Sections 1 through 6343 of this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.”

9-6-101. Title.

This chapter shall be known and may be cited as the “Arkansas Domestic Violence Shelter Act”.

History. Acts 2017, No. 583, § 1.

RESEARCH REFERENCES

ALR. Legal Protection Against Domestic Violence in Same-Sex Relationships. 19 A.L.R.7th Art. 1 (2017).

9-6-102. Definitions.

As used in this chapter:

(1) “Advocate” means an employee, supervisor, or administrator of a shelter;

(2) “Dating relationship” means a romantic or intimate social relationship between two (2) individuals that is not a casual relationship or an ordinary fraternization in a business or social context and that is determined by examining the following factors:

(A) The length of the relationship;

(B) The nature of the relationship; and

(C) The frequency of interaction between the two (2) individuals involved in the relationship;

(3) “Domestic abuse” means:

(A) Physical harm, bodily injury, or assault against an individual in a dating relationship by the other individual in the dating relationship or against a member of a family or household by another member of the family or household;

(B) Mental harm caused by the infliction of fear of imminent physical harm, bodily injury, or assault against an individual in a dating relationship by the other individual in the dating relationship or against a member of a family or household by another member of the family or household; or

(C) Sexual conduct between family or household members or between individuals in a dating relationship, whether minors or adults, that constitutes a crime under the laws of this state;

(4) “Family or household member” means a:

(A) Spouse;

(B) Former spouse;

(C) Parent;

(D) Child;

(E) Person related to another family or household member by blood;

(F) Person who cohabits with another family or household member or who cohabited in the past with another family or household member; and

(G) Person who shares one (1) or more children in common with another person;

(5) “Shelter” means an entity that:

(A) Provides services, including food, housing, advice, counseling, and assistance to victims of domestic abuse and their minor dependent children in this state; and

(B) Meets the program, fiscal, and training requirements of this chapter;

(6) “Statewide domestic violence entity” means an entity that:

(A) Provides all the required core and continuing education for statewide domestic violence shelters and programs;

(B) Is governed by a board of directors that is made up of a majority of publicly funded statewide domestic violence shelter program directors;

(C) Functions as the clearinghouse of domestic violence statistical data for Arkansas; and

(D) Exclusively services domestic violence programs; and

(7) “Volunteer” means a person who donates his or her time to provide services to victims at a shelter.

History. Acts 2017, No. 583, § 1.

9-6-103. Establishment — Purpose and criteria.

(a) The Department of Finance and Administration shall establish the Arkansas Domestic Violence Shelter Grant Program to assist in the funding of domestic violence shelters in Arkansas.

(b) The purpose and criteria of the program is to:

(1) Annually evaluate each shelter receiving funds under this chapter for compliance with the program, fiscal, and training requirements under this chapter;

(2) Promulgate rules for the evaluation of each shelter receiving funds under this chapter;

(3) Adopt a uniform system of recordkeeping to ensure the proper handling of funds by a shelter receiving funds under this chapter;

(4) Provide training and technical assistance to shelters receiving funds under this chapter to ensure minimum standards of service delivery;

(5) Serve as a clearinghouse for information relating to domestic abuse; and

(6) Provide educational programs on domestic abuse for the benefit of the general public, victims, specific groups of persons, and other persons as needed.

(c) The department shall establish rules to implement this chapter.

History. Acts 2017, No. 583, § 1.

9-6-104. Receipt of money.

Except to the extent that moneys are available in the Domestic Violence Shelter Fund, a statewide domestic violence entity that receives a grant under this chapter shall not accept money or other assistance from the United States Government or any other entity or person if the acceptance would obligate the State of Arkansas.

History. Acts 2017, No. 583, § 1.

9-6-105. Determination of grant awards.

(a) The Department of Finance and Administration shall:

(1) Establish the criteria for grant applications and awards in accordance with § 9-6-103(b);

(2) Review and grant or deny all or part of a grant application submitted under this chapter in accordance with § 9-6-103(b); and

(3) Retain oversight of all grant expenditures under this chapter.

(b) A statewide domestic violence entity that is awarded a grant under this chapter shall use the moneys that the statewide domestic violence entity receives to distribute funds to shelters that meet the requirements of this chapter.

History. Acts 2017, No. 583, § 1.

9-6-106. Operational requirements of shelters receiving domestic violence shelter funds.

A statewide domestic violence entity that receives a grant under this chapter shall distribute funds to a shelter if the shelter:

(1) Develops and implements a written nondiscrimination policy to provide services without regard to race, religion, color, age, marital status, national origin, ancestry, or sexual orientation;

(2) Provides a facility that is open, accessible, and staffed by an advocate or a volunteer each day of the calendar year and twenty-four (24) hours each day;

(3) Provides emergency housing and related supportive services in a safe and protective environment for victims of domestic abuse and their children;

(4)(A) Provides a crisis telephone hotline that is answered by an advocate or a volunteer who meets the training requirements under this chapter each day of the calendar year and twenty-four (24) hours each day.

(B) The crisis telephone hotline required under subdivision (4)(A) of this section shall not be answered by an answering machine, answering service, or mobile telephone voicemail;

(5)(A) Requires all advocates and volunteers who provide direct services to victims to sign a written confidentiality agreement that prohibits the release of:

(i) The name or other personal and identifying information about a victim served at the shelter; and

(ii) The name or other personal and identifying information about a family or household member of a victim served at the shelter.

(B) The confidentiality agreement required under subdivision (5)(A) of this section does not:

(i) Apply to an advocate who testifies in court under a lawfully issued witness subpoena; or

(ii) Prevent disclosure for federal grant review, audit, or reporting;

(6) Develops and implements a written plan for outreach efforts to aid victims of domestic violence;

(7) Provides peer support groups for victims;

(8) Provides assistance and court advocacy for victims seeking orders of protection; and

(9) Provides training and educational information on domestic violence for professionals, community organizations, and interested individuals.

History. Acts 2017, No. 583, § 1.

9-6-107. Fiscal requirements.

A statewide domestic violence entity that receives a grant under this chapter shall distribute funds to a shelter if the shelter:

(1) Incorporates in this state as a private nonprofit corporation that is exempt from taxation under the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and that has the primary purpose of providing services to victims of domestic abuse or domestic violence;

(2) Is governed by a board of directors;

(3) Develops and implements written personnel policies that state the shelter's employment practices;

(4) Develops and implements written procedures that conform with the uniform system of recordkeeping developed by the Department of Finance and Administration or its designee to ensure proper handling of funds; and

(5) Provides the department or its designee with statistical data that states the following:

(A) The type of services provided by the shelter; and

(B) The number of victims and children served each year.

History. Acts 2017, No. 583, § 1.

9-6-108. Training requirements.

A statewide domestic violence entity that receives a grant under this chapter shall distribute funds to a shelter if the shelter:

(1)(A) Requires each member of its board of directors to attend an orientation that is administered by a statewide domestic violence entity and approved by the Department of Finance and Administration or its designee within six (6) months after joining the board of directors.

(B) The orientation required under subdivision (1)(A) of this section shall include an explanation of the dynamics of domestic violence and the role of a board member;

(2)(A) Requires each advocate and volunteer who provides direct services to victims to attend fifteen (15) hours of initial staff training approved by the department or its designee.

(B) The initial staff training required under subdivision (2)(A) of this section shall include without limitation the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

(iii) Safety planning;

(iv) Individual or group facilitation; and

(v) Proper procedure for answering the crisis telephone hotline; and

(3)(A) Requires each advocate who provides direct services to victims to attend ten (10) hours of continuing education annually that is approved by the department or its designee.

(B) The continuing education required under subdivision (3)(A) of this section shall include without limitation the following topics of instruction:

(i) Crisis intervention;

(ii) Case management;

(iii) Safety planning;

(iv) Individual or group facilitation; and

(v) The proper procedure for answering the crisis telephone hotline.

History. Acts 2017, No. 583, § 1.

9-6-109. Right of entry.

A statewide domestic violence entity that receives a grant under this chapter shall have the right to enter and inspect the premises of a shelter receiving funds under this chapter and perform an annual evaluation or otherwise determine compliance with this chapter.

History. Acts 2017, No. 583, § 1.

9-6-110. Reports.

The Secretary of the Department of Finance and Administration or his or her designee shall provide an annual report by October 1 of each year to the Chair of the Senate Interim Committee on Children and Youth and the Chair of the House Committee on Aging, Children and Youth, Legislative and Military Affairs containing the following information:

- (1) The incidence of domestic violence in this state based on information obtained from shelters that receive funds under this chapter;
- (2) A description of shelters that meet the requirements of and receive funds under this chapter; and
- (3) The number of persons assisted by the shelters that receive funds under this chapter.

History. Acts 2017, No. 583, § 1; 2019, No. 910, § 3371.

Amendments. The 2019 amendment substituted “Secretary of the Department

of Finance and Administration” for “Director of the Department of Finance and Administration” in the introductory language.

9-6-111. Disclosure of information.

Information from files, reports, evaluations, inspections, or other sources that is received by the Department of Finance and Administration and its employees and designees or by a statewide domestic violence entity that receives funds under this chapter and its employees and designees is confidential and shall not be disclosed publicly in a manner that identifies an individual or facility.

History. Acts 2017, No. 583, § 1.

9-6-112. Privileged communications made by victim of domestic violence — Definitions.

(a) As used in this section:

- (1) “Advocate for victims of domestic violence” means an employee, supervisor, administrator, or volunteer of a shelter or center for victims of domestic violence authorized and regulated under this chapter;
 - (2) “Communication” means verbal, written, or electronic communications of any kind;
 - (3) “Deviate sexual activity” means the same as defined in § 5-14-101;
 - (4) “Domestic violence” means:
 - (A) Physical harm, bodily harm causing injury, or an assault against a person caused by:
 - (i) A family or household member; or
 - (ii) Another person with whom a person is in a dating relationship;
 - (B) Mental or emotional harm to a person caused by:
 - (i) A family or household member; or
 - (ii) Another person with whom a person is in a dating relationship;
- or

(C) Sexual abuse against a person by another person;

(5) "Mentally defective" means the same as defined in § 5-14-101;

(6) "Mentally incapacitated" means the same as defined in § 5-14-101;

(7) "Physically helpless" means the same as defined in § 5-14-101;

(8) "Sexual abuse" means:

(A) Sexual intercourse, deviate sexual activity, or sexual contact by means of forcible compulsion; or

(B) Sexual intercourse, deviate sexual activity, or sexual contact with a person who is:

(i) Physically helpless;

(ii) Mentally incapacitated;

(iii) Mentally defective; or

(iv) Less than sixteen (16) years of age, if the age of the other person committing the sexual intercourse, deviate sexual activity, or sexual contact is twenty (20) years of age or older;

(9) "Sexual contact" means the same as defined in § 5-14-101;

(10) "Sexual intercourse" means the same as defined in § 5-14-101;

(11) "Shelter or center for victims of domestic violence" means a domestic violence shelter that is authorized and regulated under this chapter; and

(12) "Victim of domestic violence" means a person who has been subjected to domestic violence by another person and who has sought out an advocate for victims of domestic violence or a shelter or center for victims of domestic violence.

(b)(1) Except as provided under subsection (e) of this section, communication between a victim of domestic violence and an advocate for victims of domestic violence is privileged and shall not be disclosed by the advocate for victims of domestic violence without the consent of the victim of domestic violence.

(2) A victim of domestic violence or an advocate for victims of domestic violence may not be compelled to disclose the contents of any communication made to the advocate for victims of domestic violence by the victim of domestic violence.

(c) The privilege under this section only applies when the communication was made to the advocate for victims of domestic violence while the victim of domestic violence was seeking or in the course of advocacy, help, refuge, treatment, housing, support, therapy, legal advice, counseling, medical advice, or any other assistance related to the domestic violence to which the victim of domestic violence was subjected.

(d) The privilege under this section may be claimed by:

(1) The victim of domestic violence, his or her attorney, or his or her parent or guardian if the victim of domestic violence is less than eighteen (18) years of age; and

(2) An advocate for victims of domestic violence on behalf of the victim of domestic violence.

(e) A communication privileged under this section may be disclosed if:

(1) The communication is made to another person employed by or volunteering at a shelter or center for victims of domestic violence and the disclosure is for the purposes of furthering the advocacy process; or

(2) A court compels disclosure after an in-camera hearing when the probative value of the evidence outweighs the effect on:

(A) The victim of domestic violence;

(B) The treatment relationship between the victim of domestic violence and the advocate for victims of domestic violence; and

(C) Treatment services provided by a shelter or center for victims of domestic violence.

(f) The privilege under this section is waived if:

(1) The advocate for victims of domestic violence was a witness or a party to the incident that prompted the providing of assistance by the advocate for victims of domestic violence and the communication is required by law enforcement to investigate the incident;

(2) The communication reveals the intended commission of a crime or harmful act and the disclosure is determined to be necessary by the advocate for victims of domestic violence to protect any person from a clear, imminent risk of serious mental or physical harm or injury or to forestall a serious threat to the public safety; or

(3) The victim of domestic violence waives the privilege created under this section by voluntarily disclosing or consenting to disclosure of any significant part of the privileged communication.

(g) A claim of privilege under this section is not defeated by a disclosure that was erroneously, unlawfully, or improperly compelled or made without opportunity to claim the privilege.

History. Acts 2019, No. 499, § 1.

CHAPTER 7

[Reserved.]

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 8

GENERAL PROVISIONS

SUBCHAPTER.

1. COURT-ORDERED INVESTIGATIONS OR STUDIES.

2. ARKANSAS SUBSIDIZED GUARDIANSHIP ACT.

3. RESTRICTIONS ON UNMARRIED ADULTS AS ADOPTIVE OR FOSTER PARENTS. [REPEALED.]

SUBCHAPTER 1 — COURT-ORDERED INVESTIGATIONS OR STUDIES

SECTION.	sion involving children —
9-8-101. Definitions.	Court order — Fee.
9-8-102. Investigation, study, or supervi-	

A.C.R.C. Notes. Due to the enactment of subchapter 2 by Acts 2007, No. 621, the existing provisions of this chapter have been redesignated as subchapter 1.

9-8-101. Definitions.

As used in this subchapter:

- (1) “Child” means a person under eighteen (18) years of age;
- (2) “Division” means the Division of Children and Family Services of the Department of Human Services;
- (3) “Investigation” means the process of obtaining a home study, home report, home assessment, home evaluation, or marital study;
- (4) “Licensed social worker” means a social worker authorized to perform home studies or supervised visits under the Social Work Licensing Act, § 17-103-101 et seq.;
- (5) “Rules” means rules promulgated by the division for the purpose of implementing this subchapter pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
- (6) “Study” means home study, home report, home assessment, home evaluation, or marital study; and
- (7) “Supervision” means periodic visitation to the home or school or other places for monitoring or observation to determine a child’s situation or condition or to regulate or facilitate visitation and may include court appearances to provide testimony on the visitation.

History. Acts 1991, No. 1081, § 1; 2001, No. 1420, § 1; 2019, No. 315, § 703. section was derived from Acts 1987, No. 978, §§ 1-3. For current law, see § 9-8-102.

Publisher’s Notes. Former § 9-8-101, concerning the fee for court-ordered investigations, etc., of children not being provided public services, was repealed by Acts 1991, No. 1081, § 1. The former **Amendments.** The 2019 amendment substituted “rules” for “regulations” twice in (5).

9-8-102. Investigation, study, or supervision involving children — Court order — Fee.

- (a)(1) If a court of the State of Arkansas requests or orders a licensed social worker of the court’s choice to perform any investigation, study, or supervision involving the custody, placement, adoption, or other pertinent matter with regard to a child or children, the licensed social worker selected by the court may charge a fee that shall not exceed the fair market value of the investigation, study, or supervision.
- (2)(A) The Division of Children and Family Services of the Department of Human Services shall not be ordered by any court, except the

juvenile division of circuit court, to conduct an investigation, study, or supervision unless the court has first determined the responsible party to be indigent.

(B) The investigation, study, or supervision is to take place within the State of Arkansas.

(b) When the court requests or orders a licensed social worker to perform an investigation, study, or supervision, the court shall specify the party or parties responsible for payment of the fee and may grant a reasonable period of time for payment.

(c) If payment is not made within the established time frame as set forth in the court order or as prescribed by rules, the obligation shall be considered a delinquent debt, as defined by rule, and the licensed social worker may recover the fee as provided by law for the recovery of a debt.

History. Acts 1991, No. 1081, § 2; 1995, No. 1283, § 1; 2001, No. 1420, § 2; 2003, No. 338, § 1; 2019, No. 315, § 704.

Amendments. The 2019 amendment substituted “rules” for “regulations” and “rule” for “regulation” in (c).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Family Law, Home Study, 26 U. Ark. Little Rock L. Rev. 408.

SUBCHAPTER 2 — ARKANSAS SUBSIDIZED GUARDIANSHIP ACT

SECTION.

9-8-201. Title — Purpose.

9-8-202. Administration, funding, and limitations.

9-8-203. Promulgation of rules.

9-8-204. Eligibility.

SECTION.

9-8-205. Guardianship subsidy agreement.

9-8-206. Subsidy amount.

9-8-207. Records confidential.

Effective Dates. Acts 2015, No. 1038, § 9: Apr. 4, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that federal law requires that the Department of Human Services amend the law addressed in this bill; that state law needs to comply with federal law; and that this act is necessary to avoid a violation of federal law. Therefore, an emergency is declared to exist, and this act

being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

9-8-201. Title — Purpose.

(a) This subchapter shall be known and may be cited as the “Arkansas Subsidized Guardianship Act”.

(b) The purpose of this subchapter is to create the framework for subsidized guardianships in the event that funding becomes available for such a program.

History. Acts 2007, No. 621, § 1.

9-8-202. Administration, funding, and limitations.

(a) Contingent upon adequate funding, appropriation, and position authorization, both programmatic and administrative, the Department of Human Services shall establish and administer a program of subsidized guardianship.

(b) Guardianship subsidies and services for children under this program shall be provided out of funds appropriated to the department or made available to it from other sources and shall be subject to any restrictions as outlined in the funds appropriated or made available to the department.

History. Acts 2007, No. 621, § 1.

9-8-203. Promulgation of rules.

(a) The Department of Human Services shall promulgate rules to implement this program.

(b) The department shall promulgate rules that include eligibility requirements in accordance with any requirements from the funding stream.

History. Acts 2007, No. 621, § 1; 2019, No. 315, § 705.

Amendments. The 2019 amendment substituted “rules” for “regulations” in the section heading; and deleted “and regulations” following “rules” in (a) and (b).

9-8-204. Eligibility.

(a) A child is eligible for a guardianship subsidy if the Department of Human Services determines the following:

(1) The child has been removed from the custody of his or her parent or parents as a result of a judicial determination to the effect that continuation in the custody of the parent or parents would be contrary to the welfare of the child;

(2) The department is responsible for the placement and care of the child;

(3) Being returned home or being adopted is not an appropriate permanency option for the child;

(4) Permanent placement with a guardian is in the best interest of the child;

(5) The child demonstrates a strong attachment to the prospective guardian, and the guardian has a strong commitment to caring permanently for the child;

(6) With respect to a child who has attained fourteen (14) years of age, the child has been consulted regarding the guardianship;

(7)(A) The necessary degree of relationship exists between the prospective guardian and the child.

(B) For the purposes of determining eligibility for a guardianship subsidy, the necessary degree of relationship is satisfied by a relative or fictive kin as defined in § 9-28-108;

(8) The child is eligible for Title IV-E foster care maintenance payments, or the department determines that adequate funding is available for the guardianship subsidy for a child who is not Title IV-E eligible;

(9) The home of the prospective guardian complies with any applicable rules promulgated by the:

(A) Child Welfare Agency Review Board for foster home licensure; and

(B) Department for foster home approval; and

(10) While in the custody of the department, the child resided in the home of the prospective relative guardian for at least six (6) consecutive months after the prospective guardian's home was opened as a foster home.

(b) A child who was previously determined by the department to be eligible for an initial guardianship subsidy under subsection (a) of this section may receive a subsequent guardianship subsidy when:

(1) A guardianship subsidy agreement under subsection (a) of this section was signed by the department and the initial relative guardian;

(2) The relative guardian has died or is incapacitated after the effective date of the guardianship subsidy agreement;

(3) A successor guardian is named in the guardianship assistance agreement or an amendment to the agreement;

(4) The department determines the successor guardian meets the necessary degree of relationship between the successor guardian and the child and the safety requirements in state and federal rules and regulations and department policy; and

(5) A new guardianship subsidy agreement is signed by the successor guardian and the department before the entry of a successor guardianship.

History. Acts 2007, No. 621, § 1; 2009, No. 325, § 1; 2011, No. 592, § 1; 2015, No. 1038, § 1; 2019, No. 968, § 1.

Amendments. The 2015 amendment designated the existing language as (a); and added (b).

The 2019 amendment added the (a)(7)(A) designation; added (a)(7)(B); and deleted the (8)(A) and (B) designations.

U.S. Code. Title IV-E, referred to in this section, refers to Title IV-E of the Social Security Act, which is codified as 42 U.S.C. § 670 et seq.

9-8-205. Guardianship subsidy agreement.

(a) A written guardianship subsidy agreement must be entered before the guardianship is established.

(b) The guardianship subsidy agreement shall become effective upon entry of the order granting guardianship.

(c) No guardianship subsidy may be made for any child who has attained eighteen (18) years of age unless permitted by the funding stream.

History. Acts 2007, No. 621, § 1; 2013, No. 577, § 1.

9-8-206. Subsidy amount.

(a) The amount of the guardianship subsidy shall be determined through agreement between the guardian and the Department of Human Services but cannot exceed the current foster care board rate.

(b) The amount of the guardianship subsidy shall be based on consideration of the circumstances and needs of the guardian and the child as well as the availability of other resources to meet the child's needs.

History. Acts 2007, No. 621, § 1.

9-8-207. Records confidential.

(a) All subsidized guardianship records personally identifying a juvenile shall be confidential and shall not be released or otherwise made available except to the following persons or entities and to the extent permitted by federal law:

- (1) The guardian;
- (2) The attorney for the guardian;
- (3) The child;
- (4) The attorney ad litem for the child;
- (5) For purposes of review or audit by the appropriate federal or state agency;

(6) A grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the grand jury or court;

(7)(A) Individual federal and state representatives and senators in their official capacity and their staff members with no redisclosure of information.

(B) No disclosure of any information that identifies by name or address any recipient of a subsidy or service shall be made to any committee or legislative body; and

(8) The administration of any federal program or federally assisted program that provides assistance, in cash or in kind, or services directly to individuals on the basis of need.

(b)(1) Any person or agency to whom disclosure is made shall not disclose to any other person any personally identifying information obtained pursuant to this section.

(2) Nothing in this subsection shall prevent subsequent disclosure by the guardian or the child.

(3) Any person disclosing information in violation of this subsection shall be guilty of a Class C misdemeanor.

History. Acts 2007, No. 621, § 1.

SUBCHAPTER 3 — RESTRICTIONS ON UNMARRIED ADULTS AS ADOPTIVE OR FOSTER PARENTS
[Repealed.]

SECTION.
9-8-301 — 9-8-306. [Repealed.]

9-8-301 — 9-8-306. [Repealed.]

Publisher’s Notes. This subchapter, concerning restrictions on unmarried adults as adoptive or foster parents, was repealed by Acts 2013, No. 1152, § 3. The subchapter was derived from the following sources:

- 9-8-301. Init. Meas. 2008, No. 1, § 5.
- 9-8-302. Init. Meas. 2008, No. 1, § 4.
- 9-8-303. Init. Meas. 2008, No. 1, § 3.
- 9-8-304. Init. Meas. 2008, No. 1, § 1.
- 9-8-305. Init. Meas. 2008, No. 1, § 2.
- 9-8-306. Init. Meas. 2008, No. 1, § 6.

CHAPTER 9
ADOPTION

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. REVISED UNIFORM ADOPTION ACT.
 - 3. CHILDREN IN PUBLIC CUSTODY — CONSENT TO ADOPTION.
 - 4. ARKANSAS SUBSIDIZED ADOPTION ACT.
 - 5. VOLUNTARY ADOPTION REGISTRY.
 - 6. LEGAL REPRESENTATION.
 - 7. THE STREAMLINE ADOPTION ACT.
 - 8. ADOPTION RECORDS.

RESEARCH REFERENCES

<p>ALR. Marital status or relationship of prospective adopting parents. 2 A.L.R.4th 555; 42 A.L.R.4th 776.</p> <p>Criminal liability of one arranging for adoption of child through other than licensed child placement agency (“baby broker acts”). 3 A.L.R.4th 468.</p> <p>Change in record of birthplace of adopted child. 14 A.L.R.4th 739.</p> <p>Race as factor in adoption proceedings. 34 A.L.R.4th 167.</p> <p>Natural parent’s parental rights as affected by consent to child’s adoption by other natural parent. 37 A.L.R.4th 724.</p> <p>Spouse of adopting parent: consent to</p>	<p>adoption. 38 A.L.R.4th 768.</p> <p>Sexual relationship between parties as affecting right to adopt. 42 A.L.R.4th 776.</p> <p>Validity of agreement to pay expenses of birth on condition that natural parents consent to adoption of child. 43 A.L.R.4th 935.</p> <p>Parties in adoption proceedings. 48 A.L.R.4th 860.</p> <p>Adoption as precluding testamentary gift under natural relative’s will. 71 A.L.R.4th 374.</p> <p>Post-adoption visitation by natural parents. 78 A.L.R.4th 218.</p> <p>Liability of public or private agency or</p>
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its employees to prospective adoptive parents in contract or tort for failure to complete arrangement for adoption. 8 A.L.R.5th 860.

Validity of natural parent's "blanket" consent to adoption which fails to identify adoptive parents. 15 A.L.R.5th 1.

Attorney malpractice in connection with services related to adoption of a child. 18 A.L.R.5th 892.

Adopted child as within class in testamentary gift. 36 A.L.R.5th 395.

Adopted child as within class in deed or inter vivos trust instrument. 37 A.L.R.5th 237.

Rights of an unwed father to obstruct adoption of his child by withholding consent. 61 A.L.R.5th 151.

"Wrongful adoption" causes of action against adoption agencies where children have or develop mental or physical prob-

lems which are misrepresented or not disclosed to adoptive parents. 74 A.L.R.5th 1.

Determination of status of surrogate parents as legal or natural parents in contested surrogacy births. 77 A.L.R.5th 567.

Adoption of Child by Same-Sex Partners. 61 A.L.R.6th 1.

Am. Jur. 2 Am. Jur. 2d, Adoption, § 1 et seq.

Ark. L. Rev. Note, How a State's Interests in a Child's Welfare Are Frustrated by Indiscriminate Application of the Final Judgment Rule: Arkansas Department of Human Services v. Lopez, 44 Ark. L. Rev. 895.

C.J.S. 2 C.J.S., Adoption, § 1 et seq.

U. Ark. Little Rock L.J. Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

9-9-101. Surrender of custody of minor by hospital or birthing center.

9-9-102. Preference to relative caregivers for a child in foster care —
Religious preference —
Removal of barriers to inter-ethnic adoption.

SECTION.

9-9-103. Adoption home studies affidavit.

9-9-104. Adoption information collection.

9-9-105. Employee leave for adoption —
Definition.

Cross References. Child welfare agency licensing, § 9-28-401 et seq.

Interstate compact on placement of children, § 9-29-201 et seq.

Effective Dates. Acts 1997, No. 216, § 5: Feb. 19, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to adoption and out-of-home placement of children; that failure to amend State law to mirror those federal laws will jeopardize the federal funding necessary for the State to accomplish adoptions and out-of-home

placement; that this act provides for the necessary amendments to State law. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

9-9-101. Surrender of custody of minor by hospital or birthing center.

(a) After a consent to adoption under § 9-9-208 or a relinquishment of parental rights under § 9-9-220 is executed with regard to a minor in the physical custody of a hospital or birthing center within the State of Arkansas, the biological mother of a minor child may authorize the release of the child from the hospital or birthing center to the petitioner for adoption, the guardian of the minor child, the child placement agency licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., the Division of Children and Family Services of the Department of Human Services, or the attorney acting on behalf of any of the foregoing entities.

(b)(1) A hospital or birthing center release form under this section must:

(A) Be executed in writing;

(B) Be witnessed by two (2) credible adults;

(C) Authorize the petitioner for adoption, the guardian of the minor child, the licensed child placement agency, the division, or the attorney acting on the behalf of any of the foregoing entities to obtain any medical treatment, including circumcision of a male child, reasonably necessary for the care of the minor and to authorize any physician or medical services provider to furnish additional services deemed reasonable and necessary; and

(D) Be verified before a person authorized to take oaths.

(2) If a hospital or birthing center surrenders custody of a minor child to the petitioner for adoption, the guardian of the minor child, a licensed child placement agency, the division, or the attorney acting on behalf of any of the foregoing entities, the hospital or birthing center releasing the minor shall not be liable to any person because of its acts if the hospital or birthing center has complied with this section.

(c)(1) A hospital or birthing center shall comply with the terms of a release executed under this section without requiring a court order.

(2) Once the hospital or birthing center release form described in subsection (b) of this section is presented to the hospital or birthing center, the hospital or birthing center shall discharge the minor child to the petitioner for adoption, the guardian of the minor child, a licensed child placement agency, the division, or the attorney acting on the behalf of any of the foregoing entities after the hospital or birthing center is presented photo identification of the receiving party.

History. Acts 1971, No. 169, § 1; A.S.A. 1947, § 56-125; Acts 1987, No. 1060, § 8; 2001, No. 1737, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.
U. Ark. Little Rock L. Rev. Survey of

Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

9-9-102. Preference to relative caregivers for a child in foster care — Religious preference — Removal of barriers to inter-ethnic adoption.

(a) In all custodial placements by the Department of Human Services in foster care or adoption, the court shall give preferential consideration to an adult relative over a nonrelated caregiver, provided that the relative caregiver meets all relevant child protection standards and it is in the best interest of the child to be placed with the relative caregiver.

(b) If the genetic parent or parents of the child express a preference for placing the child in a foster home or an adoptive home of the same or a similar religious background to that of the genetic parent or parents, the court shall place the child with a family that meets the genetic parent's religious preference, or if a family is not available, to a family of a different religious background that is knowledgeable and appreciative of the child's religious background.

(c) The court shall not deny a petition for adoption on the basis of race, color, or national origin of the adoptive parent or the child involved.

History. Acts 1987, No. 857, § 1; 1995, No. 956, § 1; 1997, No. 216, § 1; 2011, No. 591, § 2.

RESEARCH REFERENCES

Ark. L. Rev. Chiles, A Hand to Rock the Cradle: Transracial Adoption, the Multi-ethnic Placement Act, and a Proposal for the Arkansas General Assembly, 49 Ark. L. Rev. 501.

CASE NOTES

Preferential Consideration to Relative.

Appellants claimed error in the trial court's finding that it was in the child's best interests that he be adopted by appellees, and appellants pointed to subsection (a) of this section for preferential consideration purposes; however, keeping

in mind the standard of review, the court affirmed the trial court's best interest finding because it was not clearly contrary to the preponderance of the evidence, and the trial court was faced with choosing between two suitable adoptive homes. *Wilson v. Golen*, 2013 Ark. App. 267, 427 S.W.3d 723 (2013).

9-9-103. Adoption home studies affidavit.

(a) Upon the request of any interested party, agency, or the court, the petitioner in any adoption proceeding shall file with the court an affidavit stating the number of adoption home studies conducted on the petitioner's home prior to the filing of the petition.

(b) A copy of each adoption home study performed shall be attached to the affidavit.

History. Acts 1993, No. 598, § 1.

9-9-104. Adoption information collection.

(a) The General Assembly finds that:

(1) There is a need for more information on adoptions that occur in Arkansas;

(2) No governmental agency has the responsibility for gathering information on Arkansas adoptions; and

(3) Without adequate data, the General Assembly cannot make informed decisions regarding changes that may need to be made to adoption laws.

(b) The Office of Chief Counsel of the Department of Human Services shall prepare an adoption information sheet and shall distribute the information sheet to each of the circuit clerks in the state for distribution to each petitioner seeking to file an adoption pleading in the state.

(c) Before the entry of an interlocutory or final decree of adoption, the petitioner shall complete the adoption information sheet and return it to the clerk.

(d) The clerk shall mail the completed form to the Office of Chief Counsel of the Department of Human Services.

(e) The adoption information sheet shall include without limitation:

(1) The age of the minor to be adopted;

(2) The state in which the minor was born;

(3) The state in which the minor resided before the adoption;

(4) The state of residence of the birth mother;

(5) The age of each adoptive parent;

(6) The state in which each adoptive parent resides;

(7) Whether the adoption placement was made by a licensed Arkansas adoption agency and, if so, the name of the agency;

(8) Whether the adoption placement was made by:

(A) A private physician;

(B) A private attorney; or

(C) An out-of-state entity or individual;

(9) Whether the adoptive parents are married or single;

(10) Whether the adoptive parent is a stepparent or second-parent adoptive parent;

(11) Whether the adoptive parent is a family member of the minor child; and

(12) An approximate amount for costs paid by the petitioner in the adoption.

(f) Personally identifiable information regarding the child to be adopted or regarding an adoptive parent shall not be requested or gathered on the adoption information sheet.

History. Acts 2009, No. 1399, § 1.

9-9-105. Employee leave for adoption — Definition.

(a) As used in this section, “employer” means public and private employers, including state departments, agencies, and political subdivisions.

(b)(1) An employer that permits paternity leave or maternity leave for a biological parent after the birth of a child shall permit paternity or maternity leave for an adoptive parent upon placement of an adoptive child in the adoptive parent’s home if requested by the adoptive parent.

(2) If the employer has established a policy that provides leave time for a biological parent after the birth of a child, the same policy shall apply to an adoptive parent upon placement of an adoptive child in the adoptive parent’s home.

(3) A request for additional leave due to the placement and adoption of an ill child or a child with a disability shall be considered by the employer on the same basis as comparable cases of complications accompanying the birth of a child to an employee or employee’s spouse.

(c) Any other benefit provided by an employer, such as job guarantee or pay guarantee, shall be available to both biological parents and adoptive parents equally.

(d) An employer shall not penalize an employee for exercising his or her rights under this section.

(e) This section does not apply to an adoption:

- (1) By the spouse of a custodial parent;
- (2) Of a person over eighteen (18) years of age; or
- (3) Of a foster child by the child’s foster parents.

History. Acts 2011, No. 1235, § 2.

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT**SECTION.**

- 9-9-201. Short title.
- 9-9-202. Definitions.
- 9-9-203. Who may be adopted.
- 9-9-204. Who may adopt.
- 9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.
- 9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.
- 9-9-207. Persons as to whom consent not required.
- 9-9-208. How consent is executed.
- 9-9-209. Withdrawal of consent.
- 9-9-210. Petition for adoption.
- 9-9-211. Report of petitioner’s expenditures.
- 9-9-212. Hearing on petition — Requirements.

SECTION.

- 9-9-213. Required residence of minor.
- 9-9-214. Appearance — Continuance — Disposition of petition.
- 9-9-215. Effect of decree of adoption.
- 9-9-216. Appeal from and validation of adoption decree.
- 9-9-217. Confidentiality of hearings and records.
- 9-9-218. Recognition of foreign decrees affecting adoption.
- 9-9-219. Application for new birth record.
- 9-9-220. Relinquishment and termination of parent and child relationship.
- 9-9-221. Uniformity of interpretation.
- 9-9-222. Repeal and effective date.
- 9-9-223. Termination of rights of nonparental relatives.
- 9-9-224. Child born to unmarried mother.

Publisher's Notes. For comments regarding the Uniform Adoption Act, see Commentaries Volume B.

Cross References. Grandparent's visitation rights, § 9-13-103.

Effective Dates. Acts 1979, No. 599, § 6: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that technical and clerical errors were made in the 1977 Uniform Adoption Act and that it is immediately necessary to remedy such errors. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1986 (2nd Ex. Sess.), No. 23, § 5: May 19, 1986. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the repeal of Section 17 of Act 735 of 1977, formerly compiled as Arkansas Statute 56-217, was an error and that this Act is immediately necessary to insure that adoption proceedings and adoption records are confidential. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1284, § 6: became law without Governor's signature. Noted Apr. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of this act are of critical importance to adoption proceedings in the state of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 1106, § 5: Apr. 3, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that national fingerprint-based criminal record checks are not necessary if a prospective adoptive parent has resided in their state of residence for six years. Additional national fingerprint-based criminal record checks are not needed with international adoptions as they are already part of INS

regulations. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 1227, § 19: Apr. 7, 1997. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an important public interest in providing quality representation to juveniles and parents in dependency-neglect proceedings, pursuant to Ark. Code Ann. 9-27-316. It is further determined that children are the state's most treasured future resource and recent studies indicate that children and their parents have not always received quality representation and sometimes have gone without representation in dependency-neglect proceedings in the past because the counties of Arkansas have been unable to provide adequate representation due to lack of funding and uniform application of the law. To insure the best interests of Arkansas' children in achieving a safe and permanent home, to comply with federal law mandating appointment of guardians ad litem in dependency-neglect cases, and to prevent the loss of federal funding, a statewide system for quality dependency-neglect representation must be established. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 650, § 9: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law only allows the Federal Bureau of Inves-

tigation to release criminal history records to certain entities, which does not include private entities as currently permitted under state law. The Department of Arkansas State Police entered into an agreement with the Federal Bureau of Investigation regarding federal fingerprint-based criminal record checks, which permits disclosure only as allowed by federal law, with a grace period from the Federal Bureau of Investigation to correct state law no later than May 1, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2009, No. 230, § 3: Feb. 25, 2009: Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is in the best interest of a child to be determined to be legally free for adoption without undue delay. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is de-

clared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 861, § 9: Mar. 31, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that an audit by the Federal Bureau of Investigation found that the Department of Human Services is out of compliance with federal law regarding the confidentiality of criminal background checks; and that this act is immediately necessary because the public health and safety are at risk so long as the department remains out of compliance with federal law because of the threat of easy access to confidential records of criminal background checks. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 945, § 11: July 1, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that some juveniles in Arkansas may be unaware of their rights under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that some individuals and entities that are responsible for the welfare of a juvenile may be unaware of the rights of the juvenile under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the Child Maltreatment Act, § 12-18-101 et seq., and other applicable law; that the creation of the Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission will help increase awareness of a juvenile's legal rights; that

independent oversight of the child welfare system in Arkansas is more than likely to result in recommendations that will further improve the procedures and operations of the child welfare system; and that this act is necessary for the preservation

of the public peace, health, and safety. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019."

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

Ark. L. Rev. Brummer and Looney, Grandparent Rights in Custody, Adoption, and Visitation Cases, 39 Ark. L. Rev. 259.

Case Note, Cox v. Whitten: Limiting the Inheritance Rights of Adopted Adults, etc., 40 Ark. L. Rev. 627.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

Note, Strict Construction, Jurisdictional Requirements and the Arkansas Adoption Code: Martin v. Martin and a Missed Chance for Clarity, 49 Ark. L. Rev. 123.

U. Ark. Little Rock L.J. Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

Derden, Note: Family Law — Adoption — Revised Uniform Adoption Act, 2 U. Ark. Little Rock L.J. 135.

Brantley and Effland, Inheritance, The Share of the Surviving Spouse, and Wills: Arkansas Law and the Uniform Probate Code Compared, 3 U. Ark. Little Rock L.J. 361.

Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Arkansas Law Survey, Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

Arkansas Law Survey, Irving, Family Law, 9 U. Ark. Little Rock L.J. 173.

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Fifteenth Annual Survey of Arkansas Law, 15 U. Ark. Little Rock L.J. 427.

CASE NOTES

ANALYSIS

In General.

Construction.

Agreements to Adopt.

Grandparents.

Joinder of State Agency.

Rehabilitative Services.

Residency Requirement.

In General.

Law in effect at time of adoption governs in determining validity of adoption. Dean v. Brown, 216 Ark. 761, 227 S.W.2d 623 (1950).

Construction.

Statutory provisions involving the adoption of minors are strictly construed and applied. Dale v. Franklin, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Agreements to Adopt.

An oral agreement to adopt a child did not prevent the person making the agreement from disposing by will of all his

property to other persons than the child agreed to be adopted. Minetree v. Minetree, 181 Ark. 111, 26 S.W.2d 101 (1930) (decision under prior law).

To prove a contract to adopt a person, the burden of proof rests with the person claiming the benefit of an alleged contract for adoption, to establish it by clear, cogent, and convincing evidence. Thomas v. Costello, 226 Ark. 669, 292 S.W.2d 267 (1956) (decision under prior law).

Grandparents.

Where grandparents intervened in an adoption proceeding to show the best interests of their grandchildren, but did not seek to adopt them, it could not be argued that the adoption statutes deprived them of their rights to the grandchildren without showing a compelling state interest or deprived them of due process. Cox v. Stayton, 273 Ark. 298, 619 S.W.2d 617 (1981).

Joinder of State Agency.

There is nothing in Ark. R. Civ. P. 19 or this subchapter which compels the joinder

of the Division of Social Services (abolished — see § 25-10-101 et seq.) in all adoption proceedings. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981).

Rehabilitative Services.

Any claim of a right to receive rehabilitative services must be made in the juvenile court dependency-neglect proceedings and not later in the probate court on a petition for adoption of the neglected children, since this subchapter makes no provision for rehabilitative services. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981).

Residency Requirement.

Probate courts are not empowered to grant an adoption when neither the adopt-

ing parents nor the child sought to be adopted are residents of Arkansas. *In re Pollock*, 293 Ark. 195, 736 S.W.2d 6 (1987).

Cited: *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978); *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982); *Webb v. Harvell*, 563 F. Supp. 172 (W.D. Ark. 1983); *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983); *In re Proposed Local Rules*, 284 Ark. 133, 682 S.W.2d 452 (1984); *Summers v. Mylan*, 287 Ark. 150, 697 S.W.2d 91 (1985).

9-9-201. Short title.

This subchapter may be cited as the “Revised Uniform Adoption Act”.

History. Acts 1977, No. 735, § 1; A.S.A. 1947, § 56-201.

RESEARCH REFERENCES

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

CASE NOTES

Cited: *In re Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990); *Sides v.*

Beene, 327 Ark. 401, 938 S.W.2d 840 (1997).

9-9-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) “Child” means a son or daughter, whether by birth or by adoption;
- (2) “Court” means all probate divisions of circuit courts in this state, or the juvenile divisions of circuit courts when exercising jurisdiction over adoption cases pursuant to §§ 9-27-301 — 9-27-339, 9-27-340 [repealed], and 9-27-341 — 9-27-345 and, when the context requires, means the court of any other state empowered to grant petitions for adoption;
- (3) “Minor” means an individual under the age of eighteen (18) years;
- (4) “Adult” means any individual who is not a minor;
- (5) “Agency” means any person certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption;

(6) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;

(7) "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with the child through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the child without just cause for a period of one (1) year shall constitute a rebuttable presumption of abandonment;

(8) "Neglect" means the failure or refusal, including acts or omissions, of a person legally responsible for the care and maintenance of a child:

(a) To prevent the abuse of the child when the person legally responsible knows or has reasonable cause to know the child is or has been abused; or

(b) To provide the necessary food, clothing, shelter, and education required by law, or medical treatment necessary for the child's well-being, which causes or threatens to cause the significant impairment of the child's physical, mental, or emotional health, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected, or when the child is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(9) "Refusal to consent" means the unreasonable refusal to consent by a parent not having custody of a child to the termination of parental rights contrary to the best interest of the child;

(10) "Abuse" means any injury, sexual abuse, or sexual exploitation inflicted by a person upon a child other than by accidental means, or an injury which is at variance with the history given of it.

History. Acts 1977, No. 735, § 2; 1985, No. 879, § 1; A.S.A. 1947, § 56-202; Acts 1993, No. 758, § 2.

CASE NOTES

ANALYSIS

Abandonment.
Abuse.

Abandonment.

Record supported the circuit court's holding that a natural father's consent to the adoption of his minor child was not required under § 9-9-207 because he had failed significantly, without justifiable cause, to support the child for a period of

one year, and therefore had abandoned her. *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

Abuse.

Trial court did not err in allowing a stepfather to adopt a biological father's daughter without the biological father's consent because it was undisputed that the biological father had pled guilty to three counts of raping a minor, including the rape of his daughter. *Gordon v.*

Draper, 2013 Ark. App. 352, 428 S.W.3d 543 (2013).

Cited: King v. Lybrand, 329 Ark. 163, 946 S.W.2d 946 (1997); In re SCD, 358

Ark. 51, 186 S.W.3d 225 (2004); Scudder v. Ramsey, 2013 Ark. 115, 426 S.W.3d 427 (2013); Ducharme v. Gregory, 2014 Ark. App. 268, 435 S.W.3d 14 (2014).

9-9-203. Who may be adopted.

Any individual may be adopted.

History. Acts 1977, No. 735, § 3; A.S.A. 1947, § 56-203.

9-9-204. Who may adopt.

The following individuals may adopt:

- (1) A husband and wife together although one (1) or both are minors;
- (2) An unmarried adult;
- (3) The unmarried father or mother of the individual to be adopted;
- (4) A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his or her spouse; and if:

(i) The other spouse is a parent of the individual to be adopted and consents to the adoption;

(ii) The petitioner and the other spouse are legally separated; or

(iii) The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

History. Acts 1977, No. 735, § 4; 1979, No. 599, § 1; A.S.A. 1947, § 56-204.

RESEARCH REFERENCES

ALR. Adoption of Child by Same-Sex Partners. 61 A.L.R.6th 1.

CASE NOTES

ANALYSIS

Adoption by Unmarried Father.
Adoption by Unmarried Mother.
Standing to Adopt.

Adoption by Unmarried Father.

Trial court erred in its interpretation of this section because a child's biological father could adopt the child, despite the fact that the father was unmarried. Also, the trial court's policy concern that the adoption would relieve the mother, who had consented to the adoption, of her obligation to financially support the child

was a matter that was more appropriately addressed by the legislature. King v. Ochoa, 373 Ark. 600, 285 S.W.3d 602 (2008).

Adoption by Unmarried Mother.

Circuit court did not err in denying the adoption petition, because it was the mother's burden to present credible evidence to convince the circuit judge that adoption was in the best interest of the child, and considering the circuit court's determination that the effect of § 9-9-215 was speculative and that the mother's allegations against the father could be

afforded no weight, she failed to meet this burden. There was no corroborating testimony or evidence as to the mother's allegations regarding the father's use of alcohol and drugs or the father's abuse of his children, other than what the mother told her mother. *In re Adoption of M.K.C.*, 2009 Ark. 114, 313 S.W.3d 513 (2009).

Standing to Adopt.

Section 9-9-210(a)(3) provides that a petition for adoption shall state "the date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor." That language, hav-

ing to do with the contents of the petition, does not mean that a person who does not have custody and with whom the child has not been "placed" has no standing; standing to adopt is conferred by this section, and this section does not exclude persons who have served as foster parents of the minor to be adopted. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

Case law and this section, recognizing the right of foster parents to adopt a foster child, was not superseded by the juvenile code. *Schubert v. Ark. Dep't of Human Servs.*, 2010 Ark. App. 113 (2010).

Cited: *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989).

9-9-205. Jurisdiction — Venue — Inconvenient forum — Disclosure of name.

(a) Jurisdiction of adoption of minors:

(1) The state shall possess jurisdiction over the adoption of a minor if the person seeking to adopt the child, or the child, is a resident of this state.

(2) For purposes of this subchapter:

(A) A child under the age of six (6) months shall be considered a resident of this state if the:

(i) Child's birth mother resided in Arkansas for more than four (4) months immediately preceding the birth of the child;

(ii) Child was born in this state or in any border city that adjoins the Arkansas state line or is separated only by a navigable river from an Arkansas city that adjoins the Arkansas state line; and

(iii) Child remains in this state until the interlocutory decree has been entered, or in the case of a nonresident adoptive family, upon the receipt of approval pursuant to the Interstate Compact on the Placement of Children, § 9-29-201 et seq., the child and the prospective adoptive parents may go back to their state of residence and subsequently may return to Arkansas for a hearing on the petition for adoption;

(B) A child over the age of six (6) months shall be considered a resident of this state if the child:

(i) Has resided in this state for a period of six (6) months;

(ii) Currently resides in Arkansas; and

(iii) Is present in this state at the time the petition for adoption is filed and heard by a court having appropriate jurisdiction; and

(C) A person seeking to adopt is a resident of this state if the person:

(i) Occupies a dwelling within the state;

(ii) Has a present intent to remain within the state for a period of time; and

(iii) Manifests the genuineness of that intent by establishing an ongoing physical presence within the state together with indications that the person's presence within the state is something other than merely transitory in nature.

(3)(A) If the juvenile is the subject matter of an open case filed under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the adoption petition shall be filed in that case.

(B) The circuit court shall retain jurisdiction to issue orders of adoption, interlocutory or final, when a juvenile is placed outside the State of Arkansas.

(4) A petition for adoption may not be asserted in a guardianship proceeding, but a separate action shall be filed, and the clerk shall assign a new case number and charge a filing fee unless the filing fee is waived under Rule 72 of the Arkansas Rules of Civil Procedure.

(b) Jurisdiction of adoption of adults: Physical presence of the petitioner or petitioners or the individual to be adopted shall be sufficient to confer subject matter jurisdiction.

(c) Venue:

(1) Proceedings for adoption must be brought in the county in which, at the time of filing or granting the petition, the petitioner or petitioners, or the individual to be adopted resides or is in military service or in which the agency having the care, custody, or control of the minor is located.

(2) If the court finds in the interest of substantial justice that the matter should be heard in another forum, the court may transfer, stay, or dismiss the proceedings in whole or in part on any conditions that are just.

(d) The caption of a petition for adoption shall be styled substantially "In the matter of the Adoption..." The person to be adopted shall be designated in the caption under the name by which he or she is to be known if the petition is granted.

(e) If the child is placed for adoption, any name by which the child was previously known may be disclosed in the petition, the notice of hearing, or in the decree of adoption.

(f) In the event the child dies during the time that the child is placed in the home of an adoptive parent or parents for the purpose of adoption, the court has the authority to enter a final decree of adoption after the child's death upon the request of the adoptive parent.

History. Acts 1977, No. 735, § 5; A.S.A. 1947, § 56-205; Acts 1991, No. 658, § 1; 2001, No. 383, § 1; 2001, No. 1029, § 1; 2003, No. 650, §§ 1, 8; 2007, No. 539, §§ 1, 2; 2013, No. 282, § 1.

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CASE NOTES

ANALYSIS

Jurisdiction.
Residence.

Jurisdiction.

The General Assembly, in enacting subsection (a) of this section, has assured this state has a genuine interest or contact with at least one of the parties (adoptive parents, adopted child, or local agency that has care and control of the child) involved before an adoption matter is filed or granted within its borders. Restricting the state's jurisdiction to such instances, the General Assembly has placed our courts in a position to better ensure that the adopted child's best interests are achieved. In re Pollock, 293 Ark. 195, 736 S.W.2d 6 (1987).

Failure to comply strictly with the Adoption Code denies the probate court jurisdiction, and unless all jurisdictional requirements appear in the record, the resulting decree will be void on collateral attack. Swaffar v. Swaffar, 309 Ark. 73, 827 S.W.2d 140 (1992).

Granting of mother's, brother's, and wife's petition for adoption was inappropriate as Arkansas did not have jurisdiction; the brother and his wife were not residents of Arkansas and the child was not a resident of the state, only the child's

guardian was. Roberts v. Westover, 368 Ark. 288, 245 S.W.3d 119 (2006).

Arkansas court would have no jurisdiction over an adoption proceeding when neither the child, nor the guardians who sought to adopt the child were residents of Arkansas. Newkirk v. Burton, 2015 Ark. App. 627, 475 S.W.3d 573 (2015).

Residence.

The jurisdiction of the probate court to grant a petition for the adoption of an infant did not depend on evidence that the residence of the father was unknown nor on the recital thereof in the record. Taylor v. Collins, 172 Ark. 541, 289 S.W. 466 (1927) (decision under prior law).

Probate court, which had jurisdiction to enter original order of adoption, had a right to correct the order originally made so as to show jurisdictional fact of residence. Newell v. Black, 201 Ark. 937, 147 S.W.2d 991 (1941) (decision under prior law).

Adoption order was fatally defective where neither the petition nor the order recited that the prospective adoptive parent nor the minors sought to be adopted were residents of the county. Ozment v. Mann, 235 Ark. 901, 363 S.W.2d 129 (1962) (decision under prior law).

This section poses no permanent residency or domicile requirement. In re Adoption of Samant, 333 Ark. 471, 970 S.W.2d 249 (1998).

9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.

(a) Unless consent is not required under § 9-9-207, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:

- (1) The mother of the minor;
- (2) The father of the minor if:

- (A) The father was married to the mother at the time the minor was conceived or at any time thereafter;
- (B) The minor is his child by adoption;
- (C) He has physical custody of the minor at the time the petition is filed;

(D) He has a written order granting him legal custody of the minor at the time the petition for adoption is filed;

(E) A court has adjudicated him to be the legal father prior to the time the petition for adoption is filed;

(F) He proves a significant custodial, personal, or financial relationship existed with the minor before the petition for adoption is filed; or

(G) He has acknowledged paternity under § 9-10-120(a);

(3) Any person lawfully entitled to custody of the minor or empowered to consent;

(4) The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5) The minor, if more than twelve (12) years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and

(6) The spouse of the minor to be adopted.

(b) A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

(c) Under no circumstances may a parent or guardian of a minor receive a fee, compensation, or any other thing of value as a consideration for the relinquishment of a minor for adoption. However, incidental costs for prenatal, delivery, and postnatal care may be assessed, including reasonable housing costs, food, clothing, general maintenance, and medical expenses, if they are reimbursements for expenses incurred or fees for services rendered. Any parent or guardian who unlawfully accepts compensation or any other thing of value as a consideration for the relinquishment of a minor shall be guilty of a Class C felony.

History. Acts 1977, No. 735, § 6; 1979, No. 599, § 2; 1985, No. 467, § 1; A.S.A. 2007, No. 539, § 3; 2011, No. 607, § 1; 2013, No. 1054, § 1; 1947, § 56-206; Acts 2005, No. 437, § 1;

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CASE NOTES

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Constitutionality.

In General.

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—In General.

—Efforts Thwarted.

—Father.

—Mother.

Refusal to Consent.

Validity of Consent.

Constitutionality.

A putative father had no standing to question the constitutionality of this section, since it was not applied to him in a discriminatory manner. *Wineman v. Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

In General.

Consent can be given either by (1) any person lawfully entitled to custody of the minor or (2) any person lawfully empowered to consent to his adoption; that person clearly need not be both lawfully entitled to custody and lawfully empowered to consent. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Trial court dismissed an adoption petition filed by mother and prospective adoptive parents due to a lack of consent by biological father after the trial court learned that the father had registered as the baby's father under the Arkansas Putative Father Registry and had legitimated the baby as provided in subdivision (a)(2) of this section. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Construction.

Statutory provisions involving the adoption of minors are strictly construed and applied. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Applicability.

Subdivision (a)(5) of this section did not apply to termination of parental rights

proceedings in dependency-neglect cases, because the statute required a minor of a certain age to consent to a particular adoption, and it was therefore utilized only where the circuit court was considering a specific petition for the adoption of a child; a consent to adoption was not a necessary element of proof when a court was considering the termination of parental rights. *Childress v. Ark. Dep't of Human Servs.*, 2009 Ark. App. 322, 307 S.W.3d 50 (2009).

It was not erroneous for a trial court to terminate a mother's parental rights to the mother's children without obtaining the children's consent, under subdivision (a)(5) of this section, to the children's adoption because (1) the issue was first raised on appeal, and (2) the statute did not apply to termination proceedings in dependency-neglect cases. *Brabon v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 2, 388 S.W.3d 69 (2012).

This section, which provides that a petition to adopt a minor over the age of 12 can be granted only if written consent to a particular adoption has been executed by the minor, unless the court in the best interest of the minor dispenses with the minor's consent, does not apply to termination of parental rights proceedings; it is used only when considering a particular petition to adopt a child—not when considering the likelihood of adoption. *Hernandez v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 449, 588 S.W.3d 102 (2019).

Grandparents.

Custodial grandparents were not required to consent to the adoption of the grandchildren, but were permitted to intervene in the adoption proceedings for the limited purpose of offering evidence on the best interests of the grandchildren. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981).

Where the biological mother gave consent to the adoptive mother to adopt her daughter, consent was not required by the maternal grandparents before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

Although the grandmother had established in loco parentis status in order to intervene in the adoption proceeding, her consent was not required for the adoption where the biological father was unknown, and the biological mother voluntarily terminated her rights to the child by properly executed relinquishment and termination with power-to-consent documents, entered an appearance, and waived all notice of summons with respect to the proceedings. *Navarrete v. Creech*, 2016 Ark. App. 414, 501 S.W.3d 871 (2016).

Guardians.

Circuit court properly dismissed a petition for adoption filed by a maternal grandmother and a step-grandfather because the petition did not include background checks by the Federal Bureau of Investigation, the children's birth certificates, and the consent of the Department of Human Services, as the legal guardian of the children. *Mode v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 69 (2015).

Legal Custodian.

Court properly denied appellants' petition for adoption because the state, the child's legal custodian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was devoted to the child, and that she had a loving and appropriate home. *Cowan v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 576, 424 S.W.3d 318 (2012).

Failure of paternal uncle and aunt to request consent of the Department of Human Services in their petition for adoption or obtain consent or waiver from the department was a fatal error. In re Adoption of K.M., 2015 Ark. App. 448, 469 S.W.3d 388 (2015).

Minors.

A consenting minor's age may vary from ten up to 18 and the trial judge has the authority to attach more weight to the decision of a minor almost of full age than to that of a ten-year-old. *Brown v. Meekins*, 282 Ark. 186, 666 S.W.2d 710 (1984).

Consent of minor held unnecessary. *Brown v. Meekins*, 282 Ark. 186, 666 S.W.2d 710 (1984).

Absence of the consent of a minor whose consent is required is not a mere technicality, in that public policy clearly favors the consent of the person to be adopted, and the consent of the one to be adopted, as required by statute, must not be presumed. *Swaffar v. Swaffar*, 309 Ark. 73, 827 S.W.2d 140 (1992).

Termination of a mother's parental rights was in the best interest of the children because the mother was unable to provide a safe and suitable home for the children, she failed to comply with the case plan, and she had not visited the children since May 2012. The mother had a long history of alcohol abuse, and she was likely to continue in an abusive relationship; moreover, the fact that two of the children might not have been adopted was merely one factor that was considered, and the fact that one child might not have consented to adoption was not a necessary element of proof in a termination case. *Mitchell v. Ark. Dep't of Human Servs.*, 2013 Ark. App. 715, 430 S.W.3d 851 (2013).

Parents.

—In General.

In order to grant an adoption contrary to the wishes of a natural parent, the conditions prescribed by statute must be clearly proven and the statute construed in favor of the natural parent. *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985).

Consent of parent held necessary. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

—Efforts Thwarted.

Trial court erred in granting a petition for adoption and in holding that the putative father's consent was not required because the birth mother clearly thwarted the father's efforts to comply with subdivision (a)(2) of this section; the father not only filed with the putative-father registries in four states but also filed paternity actions in both Texas and Arkansas. In re Baby Boy B., 2012 Ark. 92, 394 S.W.3d 837 (2012).

Because the adoptive parents did not address the ground set forth in subdivision (a)(2)(F) of this section for requiring a

father's consent to adopt, the Court of Appeals affirmed the circuit court's finding that the father's efforts were enough to establish a significant custodial, personal, or financial relationship in light of the mother's thwarting his efforts, and thus that the father's consent was required. *Daily v. Stanley*, 2019 Ark. App. 126, 573 S.W.3d 7 (2019).

Circuit court did not err in denying the adoptive parents' motion for reconsideration of its ruling that a father's consent to adoption was required; the circuit court specifically found that the father registered himself on the putative father registry, he was never informed of the whereabouts of the child or allowed contact with the child, and the father had a job, car, place to live, and insurance available for the child as well as a plan in place for support of the child. *Daily v. Stanley*, 2019 Ark. App. 126, 573 S.W.3d 7 (2019).

—Father.

The courts may grant a petition for adoption regardless of the arbitrary dissent by a natural father. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Unmarried father lacking any substantial relationship with his child is not entitled to notice of the child's adoption proceeding under either the due process clause or the equal protection clause of U.S. Const. Amend. 14. *In re S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

As one means of protecting the right of natural parents with respect to the care, custody, management and companionship of their minor children a natural father who has legitimated a child has the privilege of consenting to an adoption, unless it is found that his consent is excused. *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

Although the natural father had filed an answer to a petition for adoption of the child by a stepfather and had declined to offer his consent to the adoption, where he did not appear at the hearing and had not himself pursued an appeal of the probate judge's decision granting the adoption, the natural father did not have standing on appeal to question the probate judge's decision on the issue. *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In vacating an adoption decree, the trial court never made a determination of whether the natural father qualified as a father whose consent was required under subdivision (a)(2) of this section, so the matter was remanded to the trial court for an analysis of the evidence on that issue. *Britton v. Gault*, 80 Ark. App. 311, 94 S.W.3d 926 (2003).

Where a DNA test showed the putative father was the child's biological father but he did not timely register with the putative-father registry, his consent to the adoption was not required because he had not "otherwise legitimated" the child; the father had taken no significant steps to prepare for having the baby with him if he was awarded custody. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

Adoption decree in favor of the mother and the adoptive father was proper because the biological father voluntarily, willfully, arbitrarily, and without adequate excuse failed to pay child support in excess of one year as set forth under § 9-9-207(a)(2). Therefore, his consent to the adoption was unnecessary, per subdivision (a)(2) of this section. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

Trial court erred in granting a petition for adoption and in holding that the putative father's consent was not required because the birth mother clearly thwarted the father's efforts to comply with subdivision (a)(2) of this section; the father not only filed with the putative-father registries in four states but also filed paternity actions in both Texas and Arkansas. *In re Baby Boy B.*, 2012 Ark. 92, 394 S.W.3d 837 (2012).

Trial court did not clearly err in finding that the father's consent was not required under this section, as the father did little besides registering as a putative father and filing a paternity action before, during, or after the one-month period after he learned of the mother's pregnancy. *T.R. v. L.H.*, 2015 Ark. App. 483 (2015).

Biological father's consent to the adoption was not required because the father did not fall into any of the categories set forth in subdivision (a)(2). *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Adoptive parents did not fail to comply with § 9-9-210(a)(8) because the biological father's consent to the adoption was

not required, and consent to this adoption was not required of any other person. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Appellant had not shown he was a “father” within the purview of subdivision (a)(2) of this section, and thus he was not required to consent to the child’s adoption; there had been no action to rebut the presumption that the mother’s husband was the father before the child was adopted, and the husband consented to the adoption. *Chatley v. Key* (In re Adoption of Z.K.), 2018 Ark. App. 533, 565 S.W.3d 524 (2018).

—Mother.

Trial court without jurisdiction in adoption to proceed without the mother’s consent. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980).

Refusal to Consent.

Before an order of adoption can be held binding against a nonconsenting parent, the court rendering it must have jurisdiction of both the subject matter and the person, and the record must show upon its face that the case is one where the court has authority to act. *Hughnes v. Cain*, 210 Ark. 476, 196 S.W.2d 758 (1946) (decision under prior law).

Because father legitimated the child by filing with the putative father registry, initiating a petition to determine paternity, and taking other actions to establish his parentage, the trial court correctly ruled that the father’s consent was required before the adoption could occur; because the father did not consent to the adoption, the trial court correctly denied the adoptive parents’ petition for adoption. *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

Where the adoptive parent left the child who suffered from an incurable skin condition alone in a motor home unattended by an adult, the trial court did not err in finding that the guardian was not unreasonably withholding her consent to the adoption of the child under subdivision (a)(3) of this section. The trial court focused on the special medical needs of the child, including her epidermolysis bullosa condition, seizures, and episodes of holding her breath and passing out. *Tom v. Cox*, 101 Ark. App. 388, 278 S.W.3d 110 (2008).

Evidence did not support a finding that the Department of Human Services (DHS) unreasonably withheld its consent to appellants’ adoption of a child under subdivision (a)(3) of this section; appellants’ adult son lived in their home and an uncle lived in substandard housing on the property without DHS’s knowledge while appellants were foster parents. *Lewis v. Ark. Dep’t of Human Servs.*, 2012 Ark. App. 347 (2012).

Validity of Consent.

Consent found to be valid. *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955) (decision under prior law).

Substantial compliance with statutory requirements found for consent to adoption. *A & B v. C & D*, 239 Ark. 406, 390 S.W.2d 116, cert. denied, 382 U.S. 926, 86 S. Ct. 314, 15 L. Ed. 2d 340 (1965) (decision under prior law).

Cited: *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Tisdale v. Seavey*, 286 Ark. 222, 691 S.W.2d 144 (1985); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986); *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987); *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988); *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

9-9-207. Persons as to whom consent not required.

(a) Consent to adoption is not required of:

(1) a parent who has deserted a child without affording means of identification or who has abandoned a child;

(2) a parent of a child in the custody of another, if the parent for a period of at least one (1) year has failed significantly without justifiable cause (i) to communicate with the child or (ii) to provide for the care and support of the child as required by law or judicial decree;

(3) the father of a minor if the father’s consent is not required by § 9-9-206(a)(2);

(4) a parent who has relinquished his or her right to consent under § 9-9-220;

(5) a parent whose parental rights have been terminated by order of court under § 9-9-220 or § 9-27-341;

(6) a parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent;

(7) any parent of the individual to be adopted, if the individual is an adult;

(8) any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably;

(9) the spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent;

(10) a putative father of a minor who signed an acknowledgement of paternity but who failed to establish a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed; or

(11) a putative father of a minor who is listed on the Putative Father Registry but who failed to establish a significant custodial, personal, or financial relationship with the juvenile prior to the time the petition for adoption is filed.

(b) Except as provided in §§ 9-9-212 and 9-9-224, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

History. Acts 1977, No. 735, § 7; 1977 1947, § 56-207; Acts 1989, No. 496, § 8; (1st Ex. Sess.), No. 22, §§ 1, 2; A.S.A. 2003, No. 650, § 2; 2005, No. 437, § 2.

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CASE NOTES

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 —Time Period.
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 Notice.
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 Unreasonable Withholding of Consent.

Constitutionality.

A putative father had no standing to question the constitutionality of this section, since it was not applied to him in a discriminatory manner. *Wineman v. Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

Subdivision (a)(11) of this section was not applied to the father in a discriminatory manner because he never registered with the Arkansas Putative Father Registry; hence, he lacked standing to challenge the constitutionality of the statute. *Racine v. Nelson*, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Construction.

This section should be strictly construed and applied. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983); *Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Under subdivision (a)(2) of this section, “failed significantly” does not mean “failed totally.” It only means that the failure must be significant, as contrasted with an insignificant failure. *Racine v. Nelson*, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Phrase “failed significantly” in subdivision (a)(2) of this section does not mean “failed totally.” It denotes a failure that is meaningful or important. *Fox v. Nagle*,

2011 Ark. App. 178, 381 S.W.3d 900 (2011).

Abandonment.

Abandonment of child by father held not to have been established. *Woodson v. Lee*, 221 Ark. 517, 254 S.W.2d 326 (1953); *Walthall v. Hime*, 236 Ark. 689, 368 S.W.2d 77 (1963) (preceding cases decided under prior law); *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Father’s indifference to his children’s welfare was tantamount to voluntary abandonment, so that his consent was not needed to the children’s adoption by his former wife’s second husband. *Zgleszewski v. Zgleszewski*, 260 Ark. 629, 542 S.W.2d 765 (1976) (decision under prior law).

Abandonment, in the sense of the adoption statutes, means conduct which evinces a settled purpose to forego all parental duties. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Where the natural mother and her new husband proved by clear and convincing evidence that the natural father failed significantly and without justifiable cause to provide for the care and support of the child, the natural father’s consent to the adoption was not required. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Where the father was not precluded from making his support payments, there was no evidence that the father was financially unable to meet his obligation, and the record clearly reflected that the father voluntarily chose not to pay the support, the father’s action in failing to pay support was an arbitrary act without just cause or adequate excuse, whether or not the mother interfered with his ability to observe visitation with the child. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Consent for adoption was not required where father’s denial of paternity, when child support was sought in prior years, could be considered abandonment. *King v. Lybrand*, 329 Ark. 163, 946 S.W.2d 946 (1997).

Record supported the circuit court’s holding that the natural father’s consent to the adoption of his minor child was not required under this section because he had failed significantly, without justifiable

cause, to support the child for a period of one year, and therefore had abandoned her per § 9-9-202. *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

Best Interest of Child.

The fact that, under certain circumstances, the father's consent is necessary, does not require that the adoption be granted. The court must find that the adoption is in the best interest of the child. *McKee v. Bates*, 10 Ark. App. 51, 661 S.W.2d 415 (1983); *Shemley v. Montezuma*, 12 Ark. App. 337, 676 S.W.2d 759 (1984).

The mere fact that a parent has forfeited his right to have his consent to an adoption required does not mean that the adoption must be granted. The court must further find from clear and convincing evidence that the adoption is in the best interest of the child. *Waldrip v. Davis*, 40 Ark. App. 25, 842 S.W.2d 49 (1992).

Where the court's finding was that step-parent adoption was not in children's best interest, the adoption was properly denied. *Waldrip v. Davis*, 40 Ark. App. 25, 842 S.W.2d 49 (1992).

A probate court may grant a petition for adoption if it determines at the conclusion of a hearing that the required consents have been obtained or excused and that the adoption is in the best interest of the child or individual to be adopted. In re B.A.B., 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In adoption proceedings in which the circuit court determined that the natural father's consent was not necessary, the court's findings to support the determination that allowing a minor child's stepfather to adopt her and severing the child's relationship with her natural father served the child's best interests were not clearly against the preponderance of the evidence since (1) the child had a good relationship with her stepfather, (2) prior to seeing the child in 2005, the natural father had not seen her since 2002, had a number of felony convictions, had missed child support payments, was unemployed, and lived with his mother, and (3) the natural mother and stepfather were morally fit to have the custody of the child, were physically and financially able to furnish suitable support, nurture, and education for the child, and wanted to

establish a parent-child relationship with the child. *Vick v. Cecil* (In re A.M.C.), 368 Ark. 369, 246 S.W.3d 426 (2007).

Appellants argued that the order was clearly erroneous because they proved that the mother's consent to the adoption was not required, but the merits of this argument did not need to be reached because the trial court did not make any findings on this issue and such findings were not necessary based on the conclusion that the adoption was not in the child's best interest; furthermore, as appellants made no request for findings, they waived their right under the rule. *Hollis v. Hollis*, 2015 Ark. App. 441, 468 S.W.3d 316 (2015).

If a trial court finds that an adoption is not in the best interest of a child, it is of no significance whether consent to adoption is required. If a trial court determines that consent to an adoption is not required, there can be no adoption if the trial court also finds that adoption is not in the best interest of the child, and thus the trial court in this case did not err as a matter of law in not addressing both parts of the two-part adoption analysis. *Hollis v. Hollis*, 2015 Ark. App. 441, 468 S.W.3d 316 (2015).

Adoption of a child over the objection of the child's parent, who was incarcerated, was appropriate because the circuit court did not err in finding that adoption by the child's successor guardians was in the child's best interest as the parent was essentially asking to place desire by the parent and the parent's family for a relationship with the child over the child's need for a stable and permanent home. *Newkirk v. Hankins*, 2016 Ark. App. 186, 486 S.W.3d 827 (2016).

Circuit court's best-interest determination was not clearly against the preponderance of the evidence where the adopting parents were the only family the child had known, and the child had no real relationship with either the mother or other members of the mother's family. In re Adoption of J.N., 2018 Ark. App. 467, 560 S.W.3d 806 (2018).

Trial court did not clearly err by finding that the child's mother and stepfather failed to meet their burden of showing that adoption of the child by the stepfather was in the child's best interests because there was a significant bond between the child and his paternal extended

family, the father testified that as soon as he was released from jail he would be involved in the child's life, the parents were extremely young when the child was born, and the father was only 21 years at the time of the hearing. *Ballard v. Howard*, 2018 Ark. App. 479, 560 S.W.3d 800 (2018).

Trial court's finding that adoption of the child by the father was in the child's best interest was supported by clear and convincing evidence because the trial court noted the father's stable home and employment, the fact that the child was doing well in school while in the father's care, and the mother's history of drug use and incarceration. The trial court also noted the mother's instability, volatile and sometimes violent relationships with men, and the fact that she had lost custody of her other children. *Kohler v. Croney*, 2020 Ark. App. 289, 602 S.W.3d 123 (2020).

Consent Not Required.

Finding that the father's consent was unnecessary because he failed to significantly and without justifiable cause communicate with his children for more than one year was not clearly erroneous; there was evidence that the father did not make significant efforts to see his children, he admitted that he gave up seeing his children in 2012 and that his visits were sporadic, and the trial court found that the mother had not unreasonably prevented contact with the children. *Sanders v. Savage*, 2015 Ark. App. 461, 468 S.W.3d 795 (2015).

Because the father did not establish the necessary relationship with the child prior to the time the petition for adoption was filed, his consent was not required under this section. *T.R. v. L.H.*, 2015 Ark. App. 483 (2015).

Biological father's consent to the adoption was not required because the father did not fall into any of the categories set forth in § 9-9-206(a)(2). *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Granting the petition for adoption of a stepson without consent was affirmed because the consent of one acting in loco parentis is not required under this section. *Martini v. Price*, 2016 Ark. 472, 507 S.W.3d 486 (2016).

Adoption of a child over the objection of the child's parent, who was incarcerated, was appropriate because the circuit court did not err in finding that the parent's consent to the adoption was not necessary, as the parent failed to support the child without a justifiable excuse. The successor guardians' failure to forward the parent's letters to the child had nothing to do with the parent's failure to support the child. *Newkirk v. Hankins*, 2016 Ark. App. 186, 486 S.W.3d 827 (2016).

Consent Required.

Despite the claim that the father had not seen the child for over one year, the father's consent was required for the stepfather to adopt the child, where the father claimed that the mother would not let the father see the child because the father had not been paying child support and the father's family testified the mother changed her phone number without telling them. *Havard v. Clark*, 2011 Ark. App. 86 (2011).

Court properly denied appellants' petition for adoption because the state, the child's legal guardian, did not consent; additionally, the child had to repeat a grade while residing with appellants, and the child's personality, behavior, and performance at school improved following her removal from appellants' home. The court found that the adoptive parent placed and would place an emphasis on meeting the child's educational needs, that she was devoted to the child, and that she had a loving and appropriate home. *Cowan v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 576, 424 S.W.3d 318 (2012).

Circuit court clearly erred in finding that a biological father's consent was not required for the adoption of his daughter where orders of protection concerning the mother effectively barred him from having contact with the child, he did not know where the child was located until the mother filed for divorce, and once the divorce decree was entered, he exercised visitation rights to the fullest extent allowed. *Martini v. Price*, 2016 Ark. 472, 507 S.W.3d 486 (2016).

Mother did not lose her right to consent to the adoption, because the mother had significant contacts with the child and had paid support. *Hill v. Powell*, 2016 Ark. App. 123 (2016).

Stepmother's petition to adopt stepchildren without the consent of the children's

mother was properly denied because it was not clear error to find the children's father unjustifiably blocked the mother's communication and visitation with the children, such that the mother had justifiable cause for not visiting and communicating. *Hrdlicka v. Hrdlicka* (In re Adoption of P.H.), 2020 Ark. App. 178, 598 S.W.3d 846 (2020).

Custody of Another.

Adopting couple held to have custody of child lawfully, despite lack of valid court order awarding custody. *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

Evidence.

Evidence held insufficient to support trial court's granting the petition to adopt. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Failure to Communicate or Support.

In an appeal from a circuit court's determination that a stepfather could adopt his stepchild without the consent of the child's biological father, the father's claim that his lack of support and contact with his child was justified based upon medical problems and drug abuse failed because, even after the adoption petition was filed, the father made no attempt to see his child, and by that time, the father had ceased using illegal drugs. *Roberts v. Brown*, 103 Ark. App. 1, 285 S.W.3d 716 (2008).

Adoption decree in favor of the mother and the adoptive father was appropriate because the biological father voluntarily, willfully, arbitrarily, and without adequate excuse failed to pay child support in excess of one year as set forth under subdivision (a)(2) of this section. Therefore, his consent to the adoption was unnecessary. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

Trial court properly granted a mother's petition for adoption of the parties' biological child because the father's consent was not required under subdivision (a)(2) of this section due to the fact that he failed, without justifiable cause, to establish communication or financial support to the child; a \$750 check was the only form of financial assistance given to the mother for the child throughout the child's life. *Racine v. Nelson*, 2011 Ark. 50, 378 S.W.3d 93 (2011).

Trial court erred under subdivision (a)(2) of this section in determining that a father's consent was not required to the adoption of his child by the child's stepfather because the father did not fail significantly without justifiable cause to communicate with the child; over the course of the statutory one-year period, the father saw the child on numerous occasions. The father took the child to a family reunion and a family birthday party. *Fox v. Nagle*, 2011 Ark. App. 178, 381 S.W.3d 900 (2011).

One-year period set out in subdivision (a)(2) of this section may be any one-year period, not merely the one-year period preceding the filing of the adoption petition. *Fox v. Nagle*, 2011 Ark. App. 178, 381 S.W.3d 900 (2011).

Because a father failed to provide child support for only nine months, his consent was required for adoption of the child under subdivision (a)(2) of this section. *Havard v. Clark*, 2011 Ark. App. 734 (2011).

Trial court did not err under subdivision (a)(2) of this section in granting the adoption of a child without the mother's consent because the mother failed significantly without justifiable cause to support the child for one year; she had not paid any support in several years. She made no effort to contribute to the child's support even after she obtained a job. *Lucas v. Jones*, 2012 Ark. 365, 423 S.W.3d 580 (2012).

It is not required that a parent fail "totally" in their obligations in order to fail "significantly" within the meaning of subdivision (a)(2) of this section. It only means that the failure must be significant, as contrasted with an insignificant failure. *Lucas v. Jones*, 2012 Ark. 365, 423 S.W.3d 580 (2012).

Trial court did not err under subdivision (a)(2) of this section in allowing a stepfather to adopt a biological father's daughter without the biological father's consent because the father had no contact with the daughter for 19 months; the father's reliance on his imprisonment to justify his failure to communicate with the daughter was misplaced. *Gordon v. Draper*, 2013 Ark. App. 352, 428 S.W.3d 543 (2013).

Court is unwilling to hold, for purposes of this section, that when a parent cannot have visitation with her children due to a court order, that gives the parent justifi-

able cause to make no effort in continuing a relationship with the children. *Rodgers v. Rodgers*, 2017 Ark. 182, 519 S.W.3d 324 (2017).

Circuit court erred by finding that the biological father's failure to support the child for seven years was justifiable; his imprisonment did not toll his responsibilities to support the child, he participated in a work-release program earning money yet paid no support, and neither the child support office nor the child's mother prevented him from paying support. Thus, the circuit court erred in finding that the biological father's consent to adoption was required. *Johnson v. Beatty* (In re Adoption of T.A.D.), 2019 Ark. App. 510, 588 S.W.3d 858 (2019).

Circuit court erred in finding that a father's consent to the adoption of his child was not required because the court clearly erred in finding that the father failed significantly and without justifiable cause to communicate with and to provide care and support for the child. The child's mother barred the father's visitations without a court order for a period of time, and the gaps in the father's child support payments did not constitute a significant failure to provide support for the child for one year and his arrears were now paid in full. *Raiteri v. Nowak* (In re B.R.), 2020 Ark. App. 115, 597 S.W.3d 78 (2020).

—In General.

"Failed significantly" in this section does not mean failed totally but the failure must be a significant one as contrasted with an insignificant one; it denotes a failure that is meaningful or important. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979); *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980); *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

In order to adopt a child without the necessity of parental consent, the conduct of a parent who has failed significantly without justifiable cause to communicate with his child or to provide for the care and support of his child as required by law or judicial decree, must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. *Roberts v. Swim*, 268 Ark. 917, 597 S.W.2d 840 (Ct. App. 1980); *Watkins v.*

Dudgeon, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Parent's consent held unnecessary due to significant, unjustifiable failure to communicate with or support child. *Henson v. Money*, 273 Ark. 203, 617 S.W.2d 367 (1981); *Loveless v. May*, 278 Ark. 127, 644 S.W.2d 261 (1983); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983); *Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983); *In re Titsworth*, 11 Ark. App. 197, 669 S.W.2d 8 (1984); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Justifiable cause means that the significant failure must be willful in the sense of being voluntary and intentional; it must appear that the parent acted arbitrarily and without just cause or adequate excuse. *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983).

Consent of the natural father to adoption of his children by their natural mother and her second husband held not to be waived. *Tisdale v. Seavey*, 286 Ark. 222, 691 S.W.2d 144 (1985).

The term "failed significantly without justifiable cause" does not mean that the parent must have failed totally but denotes a failure that is meaningful, important, and willful. *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988).

Father's failure to communicate with his child was unjustified in spite of his claim that the lack of contact was not meaningful because of the child's young age and that he failed to visit because the mother and her new husband did not permit visitation; evidence showed that the father placed only 6 short telephone calls to the mother over a period of more than a year, and while he claimed to have written one letter to the mother it was never received; moreover the mother and her new husband asserted that they did not prevent visitation. *Vier v. Vier*, 62 Ark. App. 89, 968 S.W.2d 657 (1998).

The natural father's consent was not required where (1) the father admitted that he had no physical contact with the child for more than two years and that he did not pay court-ordered child support for almost two years, (2) he did not attempt to utilize the help of a court to enforce his visitation rights until approximately two and a half years after he learned of the first entry of adoption, and (3) he at-

tempted to justify his failure to pay the court-ordered child support on financial trouble, including a bankruptcy, and credit-card debt. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

Where father had not communicated with his children for over 12 years, the failure to communicate was not justifiable because sexual abuse allegations against the father did not prevent him from making phone calls or writing letters; thus, the step-father did not need the father's consent to adopt. *McClelland v. Murray*, 92 Ark. App. 301, 213 S.W.3d 33 (2005).

Trial court erred in granting a petition by step-mother to adopt her step-daughter without the mother's consent as the step-mother and father refused the mother's requests for contact with the child and the mother's gifts for the child; thus, there was not clear and convincing evidence that the mother's failure to provide for the care and support was "without justification." *Neel v. Harrison*, 93 Ark. App. 424, 220 S.W.3d 251 (2005).

Under this section, it is a parent's failure to communicate with the child, not a failure to have visitation, that allows adoption to proceed without consent, as was properly permitted here; the trial court only terminated the mother's visitation, but did not issue a no-contact order, she gave no justifiable cause for failing to have any contact with her children, and once she was drug free, she further failed to petition for review of the temporary order that had suspended visitation. *Rodgers v. Rodgers*, 2017 Ark. 182, 519 S.W.3d 324 (2017).

"Failed significantly", as used in subdivision (a)(2), certainly does not mean "failed totally". It means only that the failure to communicate with the child or to provide for the care and support of the child must be significant, as contrasted with an insignificant failure. *Swaite v. Steele* (In re Adoption of JS and DS), 2018 Ark. App. 595, 566 S.W.3d 517 (2018).

—Sufficient Communication.

Parent held to have failed to significantly communicate with child. *Brown v. Fleming*, 266 Ark. 814, 586 S.W.2d 8 (Ct. App. 1979); *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987).

Evidence supported finding that parent had not failed significantly to communicate with child. *Taylor v. Hill*, 10 Ark. App.

45, 661 S.W.2d 412 (1983); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

A letter written by the biological mother to the appointed friend of the court, requesting visitation of her children, and a progress report sent from the custodial parents to her concerning the children did not qualify as communication with the children. *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Natural mother's consent to stepmother's adoption was required where mother's efforts to communicate with children had been frustrated by father changing his telephone and pager numbers and not furnishing them to mother and otherwise refusing to facilitate her contact with the children. *Cassat v. Hennis*, 74 Ark. App. 226, 45 S.W.3d 866 (2001).

Mother's consent to adoption was not required based on her failure to communicate with the child; the mother had four visits and perhaps a few phone calls with the child in the nearly three years since guardianship was granted, and she was employed and had a vehicle for at least two years before the adoption proceedings. "Failed significantly" does not mean "failed totally". *In re Adoption of J.N.*, 2018 Ark. App. 467, 560 S.W.3d 806 (2018).

Trial court did not err in ruling that a father's consent to a stepparent adoption was not required, because (1) it was undisputed the father had not had contact with the child for over a year, and (2) the court permissibly found no justifiable cause for the failure to communicate. *Holmes v. Wilhelm*, 2019 Ark. App. 120, 572 S.W.3d 873 (2019).

Appellant's petition for adoption was improperly denied on the grounds that the consent of the father was required because the incarcerated father failed to communicate with his child for a period of one year as he had no proof that he communicated with the child during 2014 or 2016; between 2015 and 2018, the father made one phone call to the telephone number associated with appellant and the child's mother; and his communications were with appellant and the child's mother, never with the child. *Holloway v. Carter*, 2019 Ark. App. 330, 579 S.W.3d 188 (2019).

Appellant's petition for adoption was improperly denied on the grounds that the consent of the father was required be-

cause the incarcerated father did not have justifiable cause for failing to communicate with his child; an isolated incident that occurred in 2018 could not justify his failure to communicate with the child in 2014, 2015, 2016, and 2017, and visitations with the child at the penitentiary were sporadic and were all initiated by either the child's mother or the father's wife. *Holloway v. Carter*, 2019 Ark. App. 330, 579 S.W.3d 188 (2019).

—Support.

The parent must furnish the support and maintenance himself and the duty is a personal one, and he may not rely upon assurance that someone else is properly supporting and maintaining the child to avoid the impact of subdivision (a)(2) of this section. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Evidence was insufficient to prove that father had unjustifiably failed to support child. *Chrisos v. Egleston*, 7 Ark. App. 82, 644 S.W.2d 326 (1983).

Evidence held to support finding that natural parent had not failed significantly and without justifiable cause to contribute to child's support. *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

A parent has the obligation to support a minor child, and no request for support is necessary. *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983).

Evidence sufficient to support finding that parent failed to support child. *Belcher v. Bowling*, 22 Ark. App. 248, 738 S.W.2d 804 (1987).

Although no order had been entered requiring child support, the trial court did not err in finding that the mother's consent to adoption was not required where for more than one year she had failed to provide any care or support for the child despite being employed, and the father testified that the mother had never offered support and that he had never declined such support. *Sharp v. Pike*, 2015 Ark. App. 670, 476 S.W.3d 217 (2015).

Circuit court did not clearly err in finding that a mother's consent was not required for the father's wife to adopt the child where the mother had failed to support the child for three years, the circuit court discredited the mother's testimony that she had no knowledge of a child-support order, and her gifts to the child

did not constitute any meaningful support. *Childress v. Braden*, 2017 Ark. App. 569, 532 S.W.3d 130 (2017).

Circuit court properly found that a father significantly and without justifiable cause failed to pay court-ordered child support for at least one year and, accordingly, that his consent to adoption of his minor children was unnecessary, even though the father was imprisoned for approximately 21 months. Evidence that on two or three occasions the father used food stamps to purchase food that he gave to the adoptive parents did not constitute support of the children in any meaningful degree. *Swaite v. Steele (In re Adoption of JS and DS)*, 2018 Ark. App. 595, 566 S.W.3d 517 (2018).

—Time Period.

The one-year period specified in this section need not be the year immediately preceding the judgment of adoption, since it means any one-year period. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Resumption of payment of support for a brief period, after the required period of one year, is not sufficient to bar an adoption without the consent of the delinquent father by starting a new one-year period of nonsupport under the statute. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

The filing of a petition for adoption establishes the cutoff date for dispensing with the natural parent's consent where the parent has failed to communicate with the child and provide support for one year. *Dixon v. Dixon*, 286 Ark. 128, 689 S.W.2d 556 (1985); *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

One-year period, after which a parent may lose his right to consent to his child's adoption if he does not communicate with or support his child, must accrue before the adoption petition is filed. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

The party seeking to adopt a child without the consent of a natural parent must prove by clear and convincing evidence that the failure to support the child not only continued for at least one year but also that it was willful, intentional, and without justifiable cause. Because one should not be permitted to assert a right

until the facts on which it is predicated have accrued, the one-year period after which the parent may lose his right to consent to the adoption must accrue before the petition for adoption is filed. *Manuel v. McCorkle*, 24 Ark. App. 92, 749 S.W.2d 341 (1988); *In re Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

There was no error in the application of this state's law pertaining to the one-year period specified in this section, to circumstances occurring prior to the transfer of jurisdiction to the state, from a state where the time period was two years, instead of one year. *In re K.F.H.*, 311 Ark. 416, 844 S.W.2d 343 (1993).

Although the Supreme Court of Arkansas has held previously that the one-year period referenced in this section can be any one-year period and is not required to be the one-year period immediately preceding the filing of the adoption petition, the Supreme Court believes that circuit courts should consider the parent's conduct, particularly in the period before the filing of the petition, in determining whether the parent's consent to an adoption should be required. *Martini v. Price*, 2016 Ark. 472, 507 S.W.3d 486 (2016).

Guardian.

The law does not require a written request for consent of legal guardian. *Pender v. McKee*, 266 Ark. 18, 582 S.W.2d 929 (1979).

Jurisdiction.

Father argued that the petition for adoption was defective because it was filed before the right to adoption without the father's consent had accrued; the petition for adoption was filed in January 2014, and he claimed to have seen his children in January or February 2013, but this argument was without merit because the one-year period could be any one-year period, and based on the facts, the father's argument that the circuit court lacked jurisdiction was without merit. *Sanders v. Savage*, 2015 Ark. App. 461, 468 S.W.3d 795 (2015).

Notice.

Under this subchapter, if consent to the adoption has been given, notice to the consenting party is not required, nor is any further participation required of them; consequently, where mother consented to adoption, she was not entitled to

subsequent service of process preceding the adoption nor was a guardian ad litem required to be appointed to represent her. *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982).

Unmarried father lacking any substantial relationship with his child is not entitled to notice of the child's adoption proceeding under either the due process clause or the equal protection clause of U.S. Const. Amend. 14. *In re S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

Where the maternal grandparents' daughter was alive and had given consent to the adoption of her child, no consent was required by the maternal grandparents nor was notice required to be given to them before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

Proof.

In an adoption proceeding contested by a natural parent the facts justifying the adoption must be established by clear and convincing evidence. *Harper v. Caskin*, 265 Ark. 558, 580 S.W.2d 176 (1979); *McKee v. Bates*, 10 Ark. App. 51, 661 S.W.2d 415 (1983).

Party seeking to adopt must prove by clear and convincing evidence that the nonconsenting parent has failed significantly without justifiable cause either to communicate with or to provide for the care and support of the child for the statutory period. *Chrisos v. Egleston*, 7 Ark. App. 82, 644 S.W.2d 326 (1983); *Taylor v. Hill*, 10 Ark. App. 45, 661 S.W.2d 412 (1983); *Dodson v. Donaldson*, 10 Ark. App. 64, 661 S.W.2d 425 (1983); *Brown v. Johnson*, 10 Ark. App. 110, 661 S.W.2d 443 (1983); *Dangelo v. Neil*, 10 Ark. App. 119, 661 S.W.2d 448 (1983); *In re Titsworth*, 11 Ark. App. 197, 669 S.W.2d 8 (1984).

When proving that a natural parent's consent is not required, the parties seeking to adopt bear the heavy burden of proving by clear and convincing evidence facts which justify dispensing with the required consent of the natural parents. *In re Glover*, 288 Ark. 59, 702 S.W.2d 12 (1986).

The party seeking to adopt a child without the consent of a natural parent must prove by clear and convincing evidence that the parent has failed significantly or

without justifiable cause to communicate with the child or to provide for the care and support of the child as required by law or judicial decree. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

Heavy burden is upon party seeking to adopt a child without consent of a natural parent to prove the failure to communicate or the failure to support by clear and convincing evidence. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987); *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

In vacating an adoption decree, the trial court never made a determination of whether the natural father qualified as a father whose consent was required under § 9-9-206(a)(2), so the matter was remanded to the trial court for an analysis of the evidence on that issue; the father's consent was not required under subdivision (a)(3) of this section if it was determined that it was not required under § 9-9-206(a)(2). *Britton v. Gault*, 80 Ark. App. 311, 94 S.W.3d 926 (2003).

In granting a petition for a mother's husband to adopt the parties' child, a trial court did not err in finding that the father's consent was not necessary under subdivision (a)(2) of this section because, by the father's own testimony, he had not seen his child in over two years; he made no child support payments after being released from prison until he received the adoption petition. *Courtney v. Ward*, 2012 Ark. App. 148, 391 S.W.3d 686 (2012).

Unreasonable Withholding of Consent.

The courts may grant a petition for adoption to petitioners regardless of the arbitrary dissent by a natural father. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

Although a father had failed significantly for a period of one year to support his child without justifiable cause, that fact did not preclude him from objecting to a proposed adoption or from being fully heard in the matter, rather it meant that he could not defeat the adoption by simply withholding his consent. *Watkins v. Dudgeon*, 270 Ark. 516, 606 S.W.2d 78 (Ct. App. 1980).

This section gives the probate court authority to decide the issue raised by the foster parents whether the Department of Human Services, as legal guardian of the

minor, has unreasonably withheld its consent to adopt. The foster parents' rights in that respect are not subject exclusively to the department's policies, the Arkansas Administrative Procedure Act (§ 25-15-201 et seq.), and circuit court review. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

Where the adoptive parent left the child who suffered from an incurable skin condition alone in a motor home unattended by an adult, the trial court did not err in finding that the guardian was not unreasonably withholding her consent to the adoption of the child under subdivision (a)(8) of this section. The trial court focused on the special medical needs of the child, including her epidermolysis bullosa condition, seizures, and episodes of holding her breath and passing out. *Tom v. Cox*, 101 Ark. App. 388, 278 S.W.3d 110 (2008).

Order granting foster parents' petition for adoption of a child and dismissing a maternal grandmother's petition for guardianship was proper; in finding that the Department of Human Services had unreasonably withheld its consent to the adoption under subdivision (a)(8) of this section, the trial court did not err by giving effect to the statutory preference for adoption. *Davis-Lewallen v. Clegg*, 2010 Ark. App. 627, 378 S.W.3d 185 (2010).

Evidence did not support a finding that the Department of Human Services (DHS) unreasonably withheld its consent to appellants' adoption of a child under subdivision (a)(8) of this section; appellants' adult son lived in their home and an uncle lived in substandard housing on the property without DHS's knowledge while appellants were foster parents. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 347 (2012).

Trial court's decision that the father unreasonably withheld consent and that it was in the child's best interest to be adopted by the adoptive parents was not against the preponderance of the evidence, which included evidence that the father was marginally self-sufficient while the adoptive parents had stable employment and housing. *T.R. v. L.H.*, 2015 Ark. App. 483 (2015).

In an adoption proceeding following termination of parental rights, the granting of the foster parents' adoption petition

was affirmed, as (1) the circuit court's decision that the Department of Human Services (DHS) unreasonably withheld consent to the adoption by preferring that the child be adopted by relatives was not clearly erroneous, (2) DHS's withholding of consent was not based on maltreatment allegations, and even if it was, the trial court was entitled to judge the credibility and seriousness of those allegations, and (3) DHS did not review all evidence relevant to the child's best interest before deciding to withhold consent. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Appellate court will apply the clearly-erroneous standard to questions of whether consent to adoption was unreasonably withheld. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Cited: *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992); *In re D.J.M.*, 39 Ark. App. 116, 839 S.W.2d 535 (1992); *Reid v. Frazee*, 61 Ark. App. 216, 966 S.W.2d 272 (1998); *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004); *Marshall v. Rubright*, 2017 Ark. App. 548 (2017).

9-9-208. How consent is executed.

(a) The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:

(1) If by the individual to be adopted, in the presence of the court;
 (2) If by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments;

(3) If by any other person, in the presence of the court or in the presence of a person authorized to take acknowledgments;

(4) If by a court, by appropriate order or certificate.

(b) A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

(c) If the parent is a minor, the writing shall be signed by a court-ordered guardian ad litem, who has been appointed by a judge of a court of record in this state to appear on behalf of the minor parent for the purpose of executing consent. The signing shall be made in the presence of an authorized representative of the Arkansas licensed placement agency taking custody of the child, or in the presence of a notary public, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed.

History. Acts 1977, No. 735, § 8; A.S.A. 1947, § 56-208; Acts 1991, No. 774, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey — Family Law, 13 U. Ark. Little Rock L.J. 369.

CASE NOTES

ANALYSIS

Construction.
Visitation Agreement.

Construction.

This section and § 9-9-220 are mutually exclusive, in that they address separate methods by which a child may be adopted and provide different means by which the relinquishment of consent or direct consent may be withdrawn. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

This section and § 9-9-209 are mutually exclusive from § 9-9-220 in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural mother document was in contravention of these sections. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Where both relinquishment of parental rights and consent provisions were con-

tained in the same document purporting to sanction the adoption of a minor child and the trial court included the ten day right to withdraw provision in its decree of adoption, the document was, in the main, a relinquishment of parental rights as embodied in § 9-9-220, and natural mother's revocation of her relinquishment five days after she signed the affidavit was effective. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Local rule imposed by chancellor blending the different statutory consent requirements of this section and § 9-9-220 was inappropriate. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Visitation Agreement.

An agreement to provide for visitation rights for a member of the natural parent's family as a basis for natural father's consent to an adoption in the absence of statute is against public policy and void and unenforceable. Poe v. Case, 263 Ark. 488, 565 S.W.2d 612 (1978).

Cited: Brown v. Meekins, 282 Ark. 186, 666 S.W.2d 710 (1984).

9-9-209. Withdrawal of consent.

(a) A consent to adoption cannot be withdrawn after the entry of a decree of adoption.

(b)(1) A consent to adopt may be withdrawn within ten (10) calendar days, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days after it is signed or the child is born, whichever is later, by filing an affidavit with the probate division clerk of the circuit court in the county designated by the consent as the county in which the guardianship petition will be filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship. If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or a legal holiday, the person may file the affidavit the next working day. No fee shall be charged for the filing of the affidavit. The court may waive the ten-day period for filing a withdrawal of consent for agencies as defined by § 9-9-202(5), minors over ten (10) years of age who consented to the adoption, or biological parents if a stepparent is adopting.

(2) The consent shall state that the person has the right of withdrawal of consent and shall provide the address of the probate division clerk of the circuit court of the county in which the guardianship will be

filed, if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship.

(3) The consent shall state that the person may waive the ten-day period for the withdrawal of consent for an adoption and elect to limit the maximum time for the withdrawal of consent for an adoption to five (5) days.

History. Acts 1977, No. 735, § 9; A.S.A. 1995, No. 1284, § 1; 2003, No. 1185, § 7; 1947, § 56-209; Acts 1991, No. 774, § 2; 2005, No. 437, § 3; 2009, No. 230, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

CASE NOTES

ANALYSIS

Construction.

Final Decree.

Interlocutory Order.

Waiting Period.

Withdrawal Prior to Filing.

Construction.

Section 9-9-208 and this section are mutually exclusive from § 9-9-220 in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural mother document was in contravention of these sections. *In re Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990).

Final Decree.

A natural parent may not withdraw his consent to adoption after entry of an order which by its terms does not require a subsequent hearing, except upon proof of fraud, duress, or intimidation. *McCluskey v. Kerlen*, 278 Ark. 338, 645 S.W.2d 948 (1983); *In re Dailey*, 20 Ark. App. 180, 726 S.W.2d 292 (1987); *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Interlocutory Order.

Consent held not revocable after entry of interlocutory order of adoption. *A. v. B.*, 217 Ark. 844, 233 S.W.2d 629 (1950);

Bradford v. Fitzgerald, 252 Ark. 655, 480 S.W.2d 336 (1972) (preceding cases decided under prior law); *McCluskey v. Kerlen*, 278 Ark. 338, 645 S.W.2d 948 (1983).

Although a mother can revoke her consent for adoption before an interlocutory order, her revocation afterwards and before the final decree is controlled by surrounding circumstances. *Martin v. Ford*, 224 Ark. 993, 277 S.W.2d 842 (1955) (decision under prior law).

A natural mother can withdraw her consent to the adoption of her child after an interlocutory decree has been entered but before a final decree has been entered only upon a proper showing of fraud, duress, or intimidation. *Pierce v. Pierce*, 279 Ark. 62, 648 S.W.2d 487 (1983).

Waiting Period.

It was not clearly erroneous to dismiss the paternal relatives' adoption petition for lack of a sufficient consent by the Department of Human Services (DHS); the consent, which DHS executed the day before the adoption hearing, did not satisfy the required waiting period and DHS did not seek to waive the waiting period. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Clear language of subdivision (b)(3) of this section indicates that a consenting party may elect to waive the 10-day waiting period in favor of a 5-day period but not less. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Withdrawal Prior to Filing.

This section is silent as to whether consent can be withdrawn prior to the filing of adoption petition. Under this section, consent to adopt cannot be withdrawn after the entry of the final order; prior to entry of adoption decree, consent

can be withdrawn if it is found to be in the best interest of the child and court orders withdrawal of consent. *Dale v. Franklin*, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Cited: *Summers v. Mylan*, 287 Ark. 150, 697 S.W.2d 91 (1985).

9-9-210. Petition for adoption.

(a) A petition for adoption signed and verified by the petitioner shall be filed with the clerk of the court, and state:

(1) The date and place of birth of the individual to be adopted, if known;

(2) The name to be used for the individual to be adopted;

(3) The date the petitioner:

(A) Acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how the petitioner acquired custody of the minor; or

(B) Was selected to adopt the minor by the child placement agency licensed by the Child Welfare Agency Review Board;

(4) The full name, age, place, and duration of residence of the petitioner;

(5) The marital status of the petitioner, including the date and place of marriage, if married;

(6) That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted;

(7) A description and estimate of value of any property of the individual to be adopted;

(8) The name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his or her normally required consent, to the adoption; and

(9) In cases involving a child born to a mother unmarried at the time of the child's birth, a statement that an inquiry has been made to the Putative Father Registry and either:

(A) No information has been filed in regard to the child born to this mother; or

(B) Information is contained in the registry.

(b) A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

History. Acts 1977, No. 735, § 10; A.S.A. 1947, § 56-210; Acts 1989, No. 496, § 6; 2011, No. 607, § 2.

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions:

Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

CASE NOTES

ANALYSIS

Standing to Adopt.
Substantial Compliance.

Standing to Adopt.

Subdivision (a)(3) of this section provides that a petition for adoption shall state "the date the petitioner acquired custody of the minor and of placement of the minor and the name of the person placing the minor; and a statement as to how petitioner acquired custody of the minor." That language, having to do with the contents of the petition, does not mean that a person who does not have custody and with whom the child has not been "placed" has no standing; standing to adopt is conferred by § 9-9-204, and that statute does not exclude persons who have served as foster parents of the minor to be adopted. *Patterson v. Robbins*, 295 Ark. 511, 749 S.W.2d 330 (1988).

Substantial Compliance.

A petition for the adoption of a child held a sufficient compliance. *Taylor v. Collins*, 172 Ark. 541, 289 S.W. 466 (1927) (decision under prior law); *Ark. Dep't of Human Servs. v. Couch*, 38 Ark. App. 165, 832 S.W.2d 265 (1992).

A petition for adoption is valid where there is substantial compliance with the statutory requirements; strict compliance

is not required. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

Adoptive parents did not fail to comply with subdivision (a)(8) of this section because the biological father's consent to the adoption was not required, and consent to this adoption was not required of any other person. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Adoptive parents did not fail to comply with subdivision (a)(9) of this section because the need for an inquiry into the Putative Father Registry had already been obviated when the petition for adoption was filed, and DNA testing had already established who the child's biological father was. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Failure of an adoption petition to include all of the information required by the statute did not deprive the circuit court of jurisdiction because all of the information was made part of the record before the adoption decree was entered. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Cited: *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

9-9-211. Report of petitioner's expenditures.

(a) Except as specified in subsection (b) of this section, the petitioner, in any proceeding for the adoption of a minor, shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The petitioner shall file a sworn affidavit showing any expenses incurred in connection with:

- (1) The birth of the minor;
- (2) Placement of the minor with petitioner;
- (3) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement;

(4) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person; and

(5) Fees charged by all attorneys involved in the adoption, including those fees charged by out-of-state attorneys.

(b) This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child, or to an adoption where the person to be adopted is an adult, or where the petitioner and the minor are related to each other in the second degree.

(c) The petitioner shall file a signed, sworn affidavit verifying that all expenses as required by this section have been truthfully listed and shall be informed by the court as to the consequences of knowingly making false material statements.

History. Acts 1977, No. 735, § 11; 1985, No. 107, § 1; A.S.A. 1947, § 56-211.

CASE NOTES

Compliance.

Adoptive parents substantially complied with this section by filing their affidavit of expenses two business days after the first adoption hearing because the biological father failed to establish that

this section sets forth a jurisdictional requirement subject to strict compliance. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

9-9-212. Hearing on petition — Requirements.

(a)(1) Before any hearing on a petition, the period in which the relinquishment may be withdrawn under § 9-9-220 or in which consent may be withdrawn under § 9-9-209, whichever is applicable, must have expired.

(2) No orders of adoption, interlocutory or final, may be entered prior to the period for withdrawal.

(3) After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition.

(4) At least twenty (20) days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to:

(A) Any agency or person whose consent to the adoption is required by this subchapter but who has not consented;

(B) A person whose consent is dispensed with upon any ground mentioned in § 9-9-207(a)(1), (2), (6), (8), and (9); and

(C) Any putative father who has signed an acknowledgement of paternity or has registered with the state's Putative Father Registry.

(5)(A) When the petitioner alleges that any person entitled to notice cannot be located, the court shall appoint an attorney ad litem who shall make a reasonable effort to locate and serve notice upon the person entitled to notice; and upon failing to so serve actual notice, the attorney ad litem shall publish a notice of the hearing directed to the person entitled to notice in a newspaper having general circula-

tion in the county one (1) time a week for four (4) weeks, the last publication being at least seven (7) days prior to the hearing.

(B) Before the hearing, the attorney ad litem shall file a proof of publication and an affidavit reciting the efforts made to locate and serve actual notice upon the person entitled to notice.

(b)(1)(A) Before placement of the child in the home of the petitioner, a home study shall be conducted by any child welfare agency licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., or any licensed certified social worker.

(B) Home studies on non-Arkansas residents may also be conducted by a person or agency in the same state as the person wishing to adopt as long as the person or agency is authorized under the law of that state to conduct home studies for adoptive purposes.

(2) The Department of Human Services shall not be ordered by any court to conduct an adoptive home study, unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The child to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(3) All home studies shall be prepared and submitted in conformity with the rules promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(4)(A) The home study shall address whether the adoptive home is a suitable home and shall include a recommendation as to the approval of the petitioner as an adoptive parent.

(B) A written report of the home study shall be filed with the court before the petition is heard.

(C) The home study shall contain an evaluation of the prospective adoption with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or minor.

(5)(A) The home study shall include a state-of-residence criminal background check, if available, and a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the adoptive parents and all household members eighteen and one-half (18½) years of age and older, excluding children in foster care.

(B) If a prospective adoptive parent has lived in a state for at least six (6) years immediately prior to adoption, then only a state-of-residence criminal background check shall be required.

(C) If the Department of Human Services has responsibility for placement and care of the child to be adopted, the home study shall include a national fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation on the prospective adoptive parents and all household members eighteen and one-half (18½) years of age or older, excluding children in foster care.

(D) Upon request by the Department of Human Services, local law enforcement shall provide the Department of Human Services with local criminal background information on the prospective adoptive parents and all household members eighteen and one-half (18½) years of age and older who have applied to be an adoptive family.

(6) A Child Maltreatment Central Registry check shall be required for all household members age fourteen (14) and older, excluding children in foster care, as a part of the home study, if such a registry is available in their state of residence.

(7) Additional national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation are not required for international adoptions as they are already a part of the requirements for adoption of the United States Citizenship and Immigration Services.

(8) Each prospective adoptive parent shall be responsible for payment of the costs of the criminal background checks, both the in-state check and the Federal Bureau of Investigation check if applicable, and shall be required to cooperate with the requirements of the Division of Arkansas State Police and the Child Maltreatment Central Registry, if available, with regard to the criminal and central registry background checks, including, but not limited to, signing a release of information.

(9)(A) Upon completion of the criminal record checks, the Division of Arkansas State Police shall forward all information obtained to either the Department of Human Services, if it is conducting the home study, or to the court in which the adoption petition will be filed.

(B) The Division of Arkansas State Police shall forward all information obtained from the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation to either the Department of Human Services, if it is doing the home study, or to the court in which the adoption petition will be filed.

(C) The circuit clerk of the county where the petition for adoption has been or will be filed shall:

(i) Keep a record of the national fingerprint-based criminal background checks performed by the Federal Bureau of Investigation for the court;

(ii) Permit only the court and the employees of the clerk's office with an official reason to view the information in the national fingerprint-based criminal background check;

(iii) Not permit anyone to obtain a copy of the national fingerprint-based criminal background check; and

(iv) Permit a person specifically ordered by the court to view the information in the national fingerprint-based criminal background check.

(D)(i) The Department of Human Services shall share the information obtained from the criminal records check and the national fingerprint-based criminal background checks only with employees of the Department of Human Services who have an official business reason to see the information.

(ii) Unless specifically ordered to do so by the court, the Department of Human Services shall not share the information obtained from the criminal records check and the national fingerprint-based criminal background checks with persons not employed by the Department of Human Services.

(c)(1) Unless directed by the court, a home study is not required in cases in which the person to be adopted is an adult. The court may also waive the requirement for a home study when a stepparent is the petitioner or the petitioner and the minor are related to each other in the second degree.

(2) The home study shall not be waived when the case is a fast-track adoption of a Garrett's Law baby under § 9-9-702.

(d)(1) After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented.

(2) The court may order a home study to assist it in determining whether the adoption is in the best interest of the persons involved.

(3) The Department of Human Services shall not be ordered by any court to conduct a home study unless:

(A)(i) The court has first determined the responsible party to be indigent; or

(ii) The person to be adopted is the subject of an open dependency-neglect case and the goal of the case is adoption; and

(B) The person to be studied lives in the State of Arkansas.

(4) All home studies shall be prepared and submitted in conformity with the rules promulgated pursuant to the Child Welfare Agency Licensing Act, § 9-28-401 et seq.

(e)(1) Notice shall be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs.

(2) Proof of the giving of the notice shall be filed with the court before the petition is heard.

(3) Where consent is not required, notice may be by certified mail with return receipt requested.

(f) When one (1) parent of a child or children is deceased, and the parent-child relationship has not been eliminated at the time of death, and adoption proceedings are instituted subsequent to such decease, the parents of the deceased parent shall be notified under the procedures prescribed in this subchapter of such adoption proceedings, except when the surviving parent-child relationship has been terminated pursuant to § 9-27-341.

(g)(1)(A) Except as provided under subdivision (g)(2) of this section, before placement for adoption, the licensed adoption agency or, when an agency is not involved, the person, entity, or organization handling the adoption shall compile and provide to the prospective adoptive parents a detailed, written health history and genetic and social history of the child that excludes information that would identify birth parents or members of a birth parent's family.

(B) The detailed, written health history and genetic and social history shall be set forth in a document that is separate from any document containing information identifying the birth parents or members of a birth parent's family.

(C) The detailed, written health history and genetic and social history shall be clearly identified and shall be filed with the clerk before the entry of the adoption decree.

(D) Upon order of the court for good cause shown, the clerk may tender to a person identified by the court a copy of the detailed, written health history and genetic and social history.

(2) Unless directed by the court, a detailed, written health history and genetic and social history of the child is not required if:

(A) The person to be adopted is an adult;

(B) The petitioner is a stepparent; or

(C) The petitioner and the child to be adopted are related to each other within the second degree of consanguinity.

History. Acts 1977, No. 735, § 12; 1979, No. 599, §§ 3, 4; 1983, No. 324, § 1; 1985, No. 445, §§ 1, 2; A.S.A. 1947, § 56-212; Acts 1991, No. 774, § 3; 1991, No. 1214, § 1; 1993, No. 1204, § 1; 1995, No. 1067, § 1; 1997, No. 1106, § 1; 2003, No. 650, § 3; 2005, No. 437, § 4; 2005, No. 1689, § 1; 2007, No. 539, § 4; 2009, No. 724, § 1; 2011, No. 1235, § 1; 2013, No. 471, § 1; 2015, No. 547, § 1; 2015, No. 861, § 1; 2019, No. 315, §§ 706, 707.

Amendments. The 2015 amendment by No. 547 substituted "eighteen and one-half (18 ½)" for "eighteen (18)" throughout (b)(5).

The 2015 amendment by No. 861 deleted "to the agency, to the licensed certified social worker" following "home study" in (b)(9)(A); inserted the (b)(9)(C)(i) designation; and added (b)(9)(C)(ii) through (b)(9)(C)(iv) and (b)(9)(D).

The 2019 amendment substituted "rules" for "regulations" in (b)(3) and (d)(4).

Cross References. Child Maltreatment Central Registry, § 12-18-901 et seq.

Preference for relative and consideration of religion, § 9-9-102.

RESEARCH REFERENCES

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U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

CASE NOTES

ANALYSIS

Grandparents.

Home Study.

Notice.

Validity of Marriage.

Waiting Period.

Waiver of Investigation.

Grandparents.

This section does not grant to grandparents a right to intervene or a right to be heard in adoption proceedings. *Tompkins v. Tompkins*, 341 Ark. 949, 20 S.W.3d 385 (2000).

Paternal grandparents did not have the right to be heard in an adoption proceed-

ing by the natural mother's new husband as (1) they never had custody of the child at issue, and the natural mother had retained custody at all times, and (2) their visitation with the child was the result of a mutual agreement, rather than pursuant to a court order. *Tompkins v. Tompkins*, 341 Ark. 949, 20 S.W.3d 385 (2000).

Where the biological mother gave consent to the adoptive mother to adopt her daughter, neither consent nor notice to the maternal grandparents was required before the adoption could proceed. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

Home Study.

For purposes of this section, appellants claimed that the failure to file a home study for the adoption of the child was jurisdictional and required reversal; however, under § 28-1-104(5), the trial court had jurisdiction to determine the child's adoption and any error in relying on appellees' home study had to be raised in the trial court. The issue was not preserved for review, as appellees' home study was admitted without objection and appellants did not raise their argument below and it was not considered by the trial court. *Wilson v. Golen*, 2013 Ark. App. 267, 427 S.W.3d 723 (2013).

Adoptive parents substantially complied with this section because a home study was conducted in a timely manner; there was a guardianship in place, the home study was conducted before the adoption was granted, and the home study was filed with the circuit court. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Notice.

Party having prior custody of child was entitled to notice and was a necessary party. *Siebert v. Benson*, 243 Ark. 843, 422 S.W.2d 683 (1968) (decision under prior law).

Under this subchapter, if consent to the adoption has been given, notice to the consenting party is not required, nor is any further participation required of them. *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982).

Alleged father of child was not entitled to notice of adoption proceeding under this section, where he was not registered in

the state putative father registry, even though he had established a substantial relationship with the child. *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

A decree of adoption would be reversed and remanded for a hearing to determine whether the natural father's consent to adoption was required where he did not receive notice of the petition to adopt and an attorney ad litem was not appointed to represent his right to receive notice. *Reid v. Frazee*, 61 Ark. App. 216, 966 S.W.2d 272 (1998).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under § 9-9-215(a)(1), because she was barred from filing her custody/visitation action by the one-year statute of limitations found in § 9-9-216(b) as she clearly was challenging the effect of the adoption decree by claiming visitation rights. A contrary result was not required by the fact that the grandmother was not given notice of the adoption proceeding as required by subsection (f) of this section because the Revised Uniform Adoption Act in effect at the time of the adoption proceedings did not provide for grandparent visitation rights. *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

Failure to give a natural parent the notice of an adoption proceeding required by this section violated due process and entitled the parent to have the subsequently entered decree set aside. *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002).

Where the putative father and the child's mother had a brief romantic relationship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

In an adoption case, where the putative father was served with a summons, petition for adoption, notice of hearing, and notice of deposition on December 14, 2004, and the hearing was held on December 20, 2004, the notice given the father satisfied the requirements of due process. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

Adoptive parents' failure to strictly comply with subsection (f) did not deprive the circuit court of jurisdiction because notice requirements had to do with jurisdiction of the person, not subject-matter jurisdiction. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Biological father's appeal of an adoption decree was not dismissed, because (1) as the father's Ark. R. Civ. P. 60(a) motion to vacate was filed more than 10 days after entry of the decree, the "deemed-denied" prong of Ark. R. App. P. Civ. 4 did not apply, and Ark. R. Civ. P. 60 had no such prong, and (2) it was unnecessary to decide if a trial court now lacked jurisdiction due to expiration of the 90-day period in Ark. R. Civ. P. 60(a), as the father argued the decree was void due to the father's prior adjudication as the child's father and lack of notice of or consent to the adoption. *Miller v. Moore*, 2017 Ark. App. 619, 535 S.W.3d 651 (2017).

Validity of Marriage.

Only argument advanced by the biological father in an adoption case was that the mother's second marriage was void because he and the mother were still validly married and the biological father was collaterally estopped from asserting that argument. The biological father failed to overcome the presumption of the validity of the marriage between the mother and

the adoptive father and it followed that he failed to prove that the adoptive father was not the child's stepparent at the time of the adoption and that a home study was required under subdivision (b)(1)(A) of this section. *Powell v. Lane*, 375 Ark. 178, 289 S.W.3d 440 (2008).

Waiting Period.

It was not clearly erroneous to dismiss the paternal relatives' adoption petition for lack of a sufficient consent by the Department of Human Services (DHS); the consent, which DHS executed the day before the adoption hearing, did not satisfy the required waiting period and DHS did not seek to waive the waiting period. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Waiver of Investigation.

Although the trial court did not expressly waive the investigation pursuant to subsection (c) of this section, the trial court did not err when it found that it was in the child's best interests to remain with the adoptive parents where it focused on the stability she had with the adoptive parents, especially as the adoptive parents were her grandparents and she had been in their custody for the majority of the past three years. *Shorter v. Reeves*, 72 Ark. App. 71, 32 S.W.3d 758 (2000).

Cited: *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981); *In re J.L.T.*, 31 Ark. App. 85, 788 S.W.2d 494 (1990).

9-9-213. Required residence of minor.

(a) A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final until the minor to be adopted, other than a stepchild of the petitioner, has lived in the home for at least six (6) months after placement by an agency or for at least six (6) months after the petition for adoption is filed.

(b) Residence in the home is not required for a minor to be adopted if the minor is in the custody of the Department of Human Services, and the minor must reside outside of the home to receive medically necessary health care.

History. Acts 1977, No. 735, § 13; § 1; 2011, No. 607, § 3; 2013, No. 471, A.S.A. 1947, § 56-213; Acts 1999, No. 518, § 2.

CASE NOTES

Temporary Order.

Adoption decree by temporary order continued without any final decree of

adoption having been issued was accepted as effecting a legal adoption under Arkansas law. *Dunn v. Richardson*, 336 F. Supp.

649 (W.D. Ark. 1972) (decision under prior law).
Cited: *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989); *In re Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989); *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

9-9-214. Appearance — Continuance — Disposition of petition.

- (a) The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.
- (b) The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.
- (c) If at the conclusion of the hearing the court determines that the required consents have been obtained or excused and the required period for the withdrawal of consent and withdrawal of relinquishment have passed and that the adoption is in the best interest of the individual to be adopted, it may (1) issue a final decree of adoption; or (2) issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than six (6) months nor more than one (1) year from the date of issuance of the decree, unless sooner vacated by the court for good cause shown.
- (d) If the requirements for a decree under subsection (c) of this section have not been met, the court shall dismiss the petition and the child shall be returned to the person or entity having custody of the child prior to the filing of the petition.

History. Acts 1977, No. 735, § 14; A.S.A. 1947, § 56-214; Acts 1991, No. 774, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Note, Strict Construction, Jurisdictional Requirements and the Arkansas Adoption Code: *Martin v. Martin* and a Missed Chance for Clarity, 49 Ark. L. Rev. 123.

CASE NOTES

ANALYSIS

- Appellate Brief.
- Best Interest of Child.
- Effective Date of Order.
- Petition Denied.
- Petition Dismissed.
- Petition Granted.
- Presence of Adopted Person.
- Standard of Review.

Standing in Loco Parentis.
Subsequent Hearing.

Appellate Brief.

In an adoption proceeding following termination of parental rights, the Court of Appeals granted appellee foster parent’s motion to strike the appellate brief of the Department of Human Services where DHS had not appealed or cross-appealed

but argued in favor of the appellant relatives in its brief. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Best Interest of Child.

Facts did not necessarily show adoption to be in the child's best interest. *Dixon v. Dixon*, 286 Ark. 128, 689 S.W.2d 556 (1985).

While keeping siblings together is a commendable goal and an important consideration as a general rule, it is but one factor that must be taken into account when determining the best interest of the child. *Ark. Dep't of Human Servs. v. Couch*, 38 Ark. App. 165, 832 S.W.2d 265 (1992).

Putative father's failure to formally establish paternity was not a major factor to be considered regarding the best interest of the child. *In re B.L.S.*, 50 Ark. App. 155, 901 S.W.2d 38 (1995).

That attempted adoptive mother was on Social Security disability and drawing welfare benefits will not provide a basis for a change in custody. *In re B.L.S.*, 50 Ark. App. 155, 901 S.W.2d 38 (1995).

Trial court did not err under subsection (d) of this section in dismissing appellants' petition for adoption of a child for whom they had been foster parents because their adult son lived in their home and an uncle lived in substandard housing on the property without the knowledge of the Department of Human Services. *Lewis v. Ark. Dep't of Human Servs.*, 2012 Ark. App. 347 (2012).

If a trial court finds that an adoption is not in the best interest of a child, it is of no significance whether consent to adoption is required. If a trial court determines that consent to an adoption is not required, there can be no adoption if the trial court also finds that adoption is not in the best interest of the child, and thus the trial court in this case did not err as a matter of law in not addressing both parts of the two-part adoption analysis. *Hollis v. Hollis*, 2015 Ark. App. 441, 468 S.W.3d 316 (2015).

Trial court's finding that adoption was not in the child's best interest was not clearly erroneous; the mother's failure to provide care and support for the child was due in part to her financial problems, which she was curing, when the mother visited the child, he was happy, and the mother had made significant strides to

improve her lifestyle and relationships. *Hollis v. Hollis*, 2015 Ark. App. 441, 468 S.W.3d 316 (2015).

Effective Date of Order.

Adoption decree is effective as of the date of the interlocutory order unless set aside for good reason at final hearing. *A. v. B.*, 217 Ark. 844, 233 S.W.2d 629 (1950) (decision under prior law).

Adoptive parent did not timely move to vacate temporary order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

Petition Denied.

Because the paternal grandmother only challenged the trial court's finding that the mother did not lose her right to consent to the adoption pursuant to § 9-9-207(a)(2), as the mother had significant contacts with the child and had paid support, but not the trial court's finding that granting the grandmother's petition for adoption was not in the child's best interest, the appellate court was left with an unchallenged basis for affirming the denial of the petition. *Hill v. Powell*, 2016 Ark. App. 123 (2016).

Petition Dismissed.

Circuit court properly dismissed a petition for adoption filed by a maternal grandmother and a step-grandfather because the petition did not include background checks by the Federal Bureau of Investigation, the children's birth certificates, and the consent of the Department of Human Services, as the legal guardian of the children. *Mode v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 69 (2015).

It was not clearly erroneous to dismiss the paternal relatives' adoption petition for lack of a sufficient consent by the Department of Human Services (DHS); the consent, which DHS executed the day before the adoption hearing, did not satisfy the required waiting period and DHS did not seek to waive the waiting period. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Petition Granted.

A probate court may grant a petition for adoption if it determines at the conclusion of a hearing that the required consents have been obtained or excused and the adoption is in the best interest of the child or individual to be adopted. *Bemis v. Hare*, 19 Ark. App. 198, 718 S.W.2d 481 (1986).

In an adoption proceeding following termination of parental rights, the granting of the foster parents' adoption petition was affirmed, as (1) the circuit court's decision that the Department of Human Services (DHS) unreasonably withheld consent to the adoption by preferring that the child be adopted by relatives was not clearly erroneous, (2) DHS's withholding of consent was not based on maltreatment allegations, and even if it was, the trial court was entitled to judge the credibility and seriousness of those allegations, and (3) DHS did not review all evidence relevant to the child's best interest before deciding to withhold consent. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Presence of Adopted Person.

Where the final decree of adoption recited "that all proper persons are before the court," it must be assumed the finding means that the children were present at the hearing. *Brown v. Fleming*, 266 Ark. 814, 586 S.W.2d 8 (Ct. App. 1979).

Where the record was silent as to whether the child sought to be adopted was present at hearing, the court would indulge in the presumption that the court below had jurisdiction and acted correctly. *Loveless v. May*, 278 Ark. 127, 644 S.W.2d 261 (1983).

Standard of Review.

Supreme Court reviews probate proceedings de novo and will not reverse a probate court's decision regarding the best interest of a child to be adopted unless it is clearly against the preponderance of the evidence, giving due regard to the opportunity and superior position of the trial court to judge the credibility of witnesses. Personal observations of the court are

entitled to even more weight in cases involving the welfare of a young child. *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989); *In re B.A.B.*, 40 Ark. App. 86, 842 S.W.2d 68 (1992).

Standing in Loco Parentis.

Subsection (a) of this section is mandatory and jurisdictional and could not be complied with unless persons standing in loco parentis to child were given notice of guardianship and adoption proceedings. *Nelson v. Shelly*, 268 Ark. 760, 600 S.W.2d 411 (Ct. App. 1980).

Subsequent Hearing.

After the natural father brought to the court's attention that the child at issue, who was seven years of age at the beginning of this process, was past the age of ten years at the time the trial was held, the probate judge properly scheduled a subsequent hearing at which he questioned the child and ascertained the child's consent to be adopted. *Reid v. Frazee*, 72 Ark. App. 474, 41 S.W.3d 397 (2001).

Circuit court did not abuse its broad discretion in holding a subsequent hearing so the adoptive parents could introduce the home study into evidence because the issue presented in the case was so grave and of such importance that it would constitute an injustice not to allow the record to be completed; the circuit court had broad discretion to reopen the case for further proof after both sides had rested, particularly to ascertain the truth of the matter to be determined on a material issue. *Lagios v. Goldman*, 2016 Ark. 59, 483 S.W.3d 810, cert. denied, — U.S. —, 137 S. Ct. 77, 196 L. Ed. 2d 35 (2016).

Cited: *In re Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990); *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

9-9-215. Effect of decree of adoption.

(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his or her biological relatives, including his or her biological parents, so that the adopted

individual thereafter is a stranger to his or her former relatives for all purposes. This includes inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship. However, in cases where a biological or adoptive parent dies before a petition for adoption has been filed by a step-parent of the minor to be adopted the court may grant visitation rights to the parents of the deceased biological or adoptive parent of the child if such parents of the deceased biological or adoptive parent had a close relationship with the child prior to the filing of a petition for step-parent adoption, and if such visitation rights are in the best interests of the child. The foregoing provision shall not apply to the parents of a deceased putative father who has not legally established his paternity prior to the filing of a petition for adoption by a step-parent. For the purposes of this section, "step-parent" means an individual who is the spouse or surviving spouse of the biological or adoptive parent of a child but who is not a biological or adoptive parent of the child.

(2) To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

(b) An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

(c) Sibling visitation shall not terminate if the adopted child was in the custody of the Department of Human Services and had a sibling who was not adopted by the same family and before adoption the circuit court in the juvenile dependency-neglect or families-in-need-of-services case has determined that it is in the best interests of the siblings to visit and has ordered visitation between the siblings to occur after the adoption.

History. Acts 1977, No. 735, § 15; § 1; 2005, No. 437, §§ 5, 6; 2011, No. 607, 1983, No. 324, § 2; 1985, No. 403, § 2; § 4.
A.S.A. 1947, § 56-215; Acts 1995, No. 889,

RESEARCH REFERENCES

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CASE NOTES

ANALYSIS

Applicability.
Disinterment.
Exclusions Permitted.
Finality of Decree.
Inheritance.
Petition Denied.
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—In General.
—Grandparents.
Wrongful Death Action.

Applicability.

The law in effect at the time of an ancestor's death controls the issue of inheritance, not the law in effect at the time of adoption; this section applies where the death occurs after this section's 1977 enactment, even if the adoption occurred before 1977. *Wheeler v. Myers*, 330 Ark. 728, 956 S.W.2d 863 (1997).

Because adoption, inheritance laws were not intended to modify the established meaning of terms used in deeds, a trial court did not err in refusing to consider § 56-109 (repealed) when determining whether or not an adopted child was entitled to a remainder interest in a deed that used the word "heirs." *Brown v. Johnson*, 81 Ark. App. 60, 97 S.W.3d 924 (2003).

Disinterment.

Appellate court overruled appellants' assertion that the adoptive father's permission was not needed to disinter the decedent's remains, because either the adoptive father's consent was necessary or in cases where there was disagreement, the matter must be submitted for a judicial decision, when for all intents and purposes, the adoptive father was the decedent's legitimate blood descendent. *Tozer v. Warden*, 101 Ark. App. 396, 278 S.W.3d 134 (2008).

Exclusions Permitted.

Even though this section treats adopted persons as blood descendants for "all purposes," it nevertheless allows documents or instruments to expressly exclude an adopted individual from their operation. *Sides v. Beene*, 327 Ark. 401, 938 S.W.2d 840 (1997).

Finality of Decree.

Adoptive parent who did not timely appeal a temporary order of adoption did

not, under Ark. R. Civ. P. 41, have an absolute right to dismiss his petition for adoption anytime prior to the entry of a final order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

Once an interlocutory decree of adoption is entered, it is construed as a final decree if no subsequent hearing is required by the terms of that decree; and the natural parent cannot withdraw consent after entry of the decree unless fraud, duress, or intimidation is shown. In re *Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

Subsection (b) of this section provides, in the last sentence, that an interlocutory decree can be set aside. *Dougan v. Gray*, 318 Ark. 6, 884 S.W.2d 239 (1994).

Inheritance.

Child adopted after execution of will stood in the position of a natural born child born subsequently to the execution of the will, and inherited accordingly. *Grimes v. Jones*, 193 Ark. 858, 103 S.W.2d 359 (1937) (decision under prior law).

Where adoption was void, adopted child could not inherit real estate but was entitled to inherit personal property. *Dean v. Brown*, 216 Ark. 761, 227 S.W.2d 623 (1950) (decision under prior law).

Adopted son was heir of first adoptive father even though he was adopted by others prior to death of first adoptive father. *Hawkins v. Hawkins*, 218 Ark. 423, 236 S.W.2d 733 (1951) (decision under prior law).

Adopted son held not "heir of the body" of deceased foster parent. *Davis v. Davis*, 219 Ark. 623, 243 S.W.2d 739 (1951) (decision under prior law).

Children adopted by decedent shortly before his death were entitled to inherit from him even though the final decree was not entered during his lifetime. *Williams v. Nash*, 247 Ark. 135, 445 S.W.2d 69 (1969) (decision under prior law).

A final decree of adoption must be entered in this state if an adopted child is to inherit at all from his adoptive parents, as inheritance under the "virtual adoption" theory is unknown to the law of this jurisdiction. *Wilks v. Langley*, 248 Ark. 227, 451 S.W.2d 209 (1970) (decision under prior law).

The law in effect at the time of the death of the adopted child is controlling on matters of inheritance; thus, under this section, the heirs of the adoptive parents inherit to the exclusion of the blood relatives. *In re Estate of Caisson*, 289 Ark. 216, 710 S.W.2d 211 (1986).

Petition Denied.

Circuit court did not err in denying the adoption petition because it was the mother's burden to present credible evidence to convince the circuit judge that adoption was in the best interest of the child, and considering the circuit court's determination that the effect of this section was speculative and that the mother's allegations against the father could be afforded no weight, she failed to meet this burden. There was no corroborating testimony or evidence as to the mother's allegations regarding the father's use of alcohol and drugs or the father's abuse of his children, other than what the mother told her mother. *In re Adoption of M.K.C.*, 2009 Ark. 114, 313 S.W.3d 513 (2009).

Termination of Legal Relationships.

Trial court erred in holding that before appellant's adoption of his wife's adopted child could go forward, appellant was required to either obtain the consent of the child's biological father or produce an order demonstrating that the biological father's parental rights had been terminated because by operation of law, the former adoption decree forever severed and held for naught the biological father's rights, responsibilities, and legal relationship with the child. *In re Adoption of H.L.M.*, 99 Ark. App. 115, 257 S.W.3d 587 (2007).

Arkansas Supreme Court has interpreted the statute as an expression of public policy favoring a complete severance of the relationship between an adopted child and his or her biological family in order to further the best interest of the child. *In re Adoption of H.L.M.*, 99 Ark. App. 115, 257 S.W.3d 587 (2007).

—In General.

An adoption not only terminates all legal relationships between the adopted individual and his natural parents and legally makes him a stranger to them, it also commands that all courts recognize that principle in construing all statutes.

Webb v. Harvell, 563 F. Supp. 172 (W.D. Ark. 1983).

Section 9-27-341(c)(1) and subdivision (a)(1) of this section point to a public policy which, in determining what is in the child's best interest, favors a complete severing of the ties between a child and its biological family when he is placed for adoption. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993); *Vice v. Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

—Grandparents.

Decree of adoption would terminate the relational status between adopted grandchildren and their grandparents. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981).

Paternal grandparents of adopted child were not entitled to obtain visitation privileges since this section terminates all legal relationships so that the adopted infant is for all legal purposes a stranger to his former relatives; it is unquestionably within the province of the legislature to decide that the reasons favoring the solidarity of the adoptive family outweigh those favoring the grandparents and other blood kin who are related to the child through its deceased parent. *Wilson v. Wallace*, 274 Ark. 48, 622 S.W.2d 164 (1981); *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983).

When the public policy favoring maintenance of grandparental ties collides with the stronger public policy to strengthen the relationships within adoptive families, the former must give way to the latter. *Woodson v. Kilcrease*, 7 Ark. App. 252, 648 S.W.2d 72 (1983).

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

The biological father's consent to an adoption terminated any rights of visitation that his mother might claim. *Vice v. Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under subsection (a)(1) of this section, because she was barred from filing her

custody/visitation action by the one-year statute of limitations found in § 9-9-216(b) as she clearly was challenging the effect of the adoption decree by claiming visitation rights. A contrary result was not required by the fact that the grandmother was not given notice of the adoption proceeding as required by § 9-9-212(f) because the Revised Uniform Adoption Act in effect at the time of the adoption proceedings did not provide for grandparent visitation rights. *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

Mother's adoption by adoptive parents severed a grandmother's relationship with the mother (her daughter), and therefore, the grandmother was no longer a grandparent entitled to visitation under § 9-13-103(b)(2) with the mother's child. The circuit court erred by continuing to recognize the grandmother's visitation rights following the adoption. *Scudder v. Ramsey*, 2013 Ark. 115, 426 S.W.3d 427 (2013).

In a case in which the circuit court erroneously decided to forego a relative-placement option with the grandparents in favor of terminating the mother's parental rights, the Department of Human Services erred in saying that the grandparents could later become an adoptive placement for the children if they were able to meet all the necessary child protection standards and successfully peti-

tion to adopt the children because the grandparents were not parties to the termination of parental rights case and would not have standing to intervene as a matter of right in a subsequent adoption proceeding should the termination be affirmed; and, if the children were not placed with the grandparents now, it was unlikely the court would allow them to adopt the children later. *Clark v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 223, 575 S.W.3d 578 (2019).

Wrongful Death Action.

The omission of any provision for an adoptive parent's death does not show a legislative intent to deny an adopted child the right to assert a cause of action for the death of the adoptive parent. *Moon Distribs., Inc. v. White*, 245 Ark. 627, 434 S.W.2d 56 (1968) (decision under prior law).

Where the decedent's natural-born child had been adopted, the child was no longer the child of the decedent and was not one of the beneficiaries authorized to recover for the wrongful death of the decedent. *Webb v. Harvell*, 563 F. Supp. 172 (W.D. Ark. 1983).

Cited: *Irvan v. Kizer*, 286 Ark. 105, 689 S.W.2d 548 (1985); *In re Perkins/Pollnow*, 300 Ark. 390, 779 S.W.2d 531 (1989); *J.M.E. v. Valley View Agri Sys.*, 2016 Ark. App. 531, 505 S.W.3d 211 (2016).

9-9-216. Appeal from and validation of adoption decree.

(a) An appeal from any final order or decree rendered under this subchapter may be taken in the manner and time provided for appeal from a judgment in a civil action.

(b) Subject to the disposition of an appeal, upon the expiration of one (1) year after an adoption decree is issued, the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter unless, in the case of the adoption of a minor, the petitioner has not taken custody of the minor or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.

History. Acts 1977, No. 735, § 16; A.S.A. 1947, § 56-216.

Publisher's Notes. The Arkansas Supreme Court, in its per curiam order of November 22, 1982 (277 Ark. 520), observed that some confusion exists among

members of the bar as to the date of the final order for the purpose of appeal. The court stated: "In order to put an end to the confusion, we shall prospectively construe any decree of adoption to be a final decree, no matter whether it is interlocutory or

final, if no subsequent hearing is required by the terms of that decree.”

RESEARCH REFERENCES

Ark. L. Rev. Case Note, *In re Adoption of Pollock*: Arkansas Probate Court Juris-

diction — A Question of Policy, 41 Ark. L. Rev. 677.

CASE NOTES

ANALYSIS

Construction.

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Construction.

The one-year statute of limitations in subsection (b) of this section provides a special procedure which cannot be annulled by Ark. R. Civ. P. 41(a) or the savings statute, § 16-56-126, which allows an action dismissed without prejudice to be refiled within one year of the dismissal. *In re Martindale*, 327 Ark. 685, 940 S.W.2d 491 (1997).

This section provides a maximum one-year time limit after which any action to set aside an adoption order is barred, but does not affect the 90-day limit set forth in Ark. R. Civ. P. 60(a) and only serves to limit the time in which a probate court could act to set aside an order pursuant to Ark. R. Civ. P. 60(c). *Mayberry v. Flowers*, 69 Ark. App. 307, 12 S.W.3d 652 (2000).

Adoption After Termination of Parental Rights.

Ark. Sup. Ct. & Ct. App. R. 6-9 did not govern a post-termination adoption appeal, even though it originated from a dependency-neglect case, because the types of orders enumerated in the rule do not contemplate adoption proceedings, and this section mandates that adoption appeals may be taken in the manner and time provided for appeal from a judgment in a civil action. *Canerday-Banks v. Barton*, 2018 Ark. App. 523 (2018).

Collateral Attack.

In a collateral attack on a foreign adoption former section setting the time upon which an adoption becomes final did not apply; where the parent was not given notice of the adoption proceeding, the section did not begin to run until the parent discovered the identity of the adopting parties. *Olney v. Gordon*, 240 Ark. 807, 402 S.W.2d 651 (1966) (decision under prior law).

A petition to determine heirship filed by deceased's collateral heirs was a collateral attack on the order of adoption, which was not subject to collateral attack. *Williams v. Nash*, 247 Ark. 135, 445 S.W.2d 69 (1969) (decision under prior law).

Probate court, in adoption proceedings, had no authority to grant visitation rights to grandmother and hence visitation portion of the adoption decree in excess of the court's authority or subject matter jurisdiction was void and subject to collateral attack. *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978) (decision under prior law).

Finality of Decree.

Any decree of adoption is a final decree, no matter whether it is interlocutory or final, if no subsequent hearing is required by the terms of that decree. *In re Adoption Orders*, 277 Ark. 520, 642 S.W.2d 573 (1982).

Adoptive parent who did not timely appeal a temporary order of adoption did not, under Ark. R. Civ. P. 41, have an absolute right to dismiss his petition for adoption anytime prior to the entry of a final order of adoption. *Toai Cong Pham v. Hanh My Truong*, 291 Ark. 442, 725 S.W.2d 569 (1987).

Fraud.

Where an order for the adoption of a minor child was entered in due form, the person adopting the child and all others claiming as his heirs were estopped to question the validity of the proceedings on

the ground of fraud in its procurement, not found on the face of the record. *Avery v. Avery*, 160 Ark. 375, 255 S.W. 18 (1923) (decision under prior law).

Where a mother of minor children alleged that she consented to adoption of her children by her former husband's second wife due to fraud, duress, and intimidation, the trial court had jurisdiction to hear her petition to set aside the interlocutory adoption decree pursuant to this section; the 90-day limitation in Ark. R. Civ. P. 60 was inapplicable based on the finding of fraud. *Smith v. Smith*, 2012 Ark. App. 6 (2012).

Limitation of Actions.

Former section barred plaintiff's petition to vacate a final order of adoption of his former wife's natural child on procedural grounds brought four years after the issuance of the final order. *Cottrell v. Cottrell*, 258 Ark. 116, 522 S.W.2d 433 (1975) (decision under prior law).

Where a petition challenging an adoption was filed before this subchapter became effective, the trial court erred in applying the one-year statute of limitations under this section to the action rather than the two-year limitation under former section. *Allton v. Sumter*, 274 Ark. 448, 625 S.W.2d 502 (1981).

Where natural father was given no notice of the pending adoption, it would be a denial of due process to hold that the adoption decree was protected from challenge after one year from its issuance. *McKinney v. Ivey*, 287 Ark. 300, 698 S.W.2d 506 (1985).

The maternal grandmother was not entitled to visitation with two children adopted by the natural father's new wife under § 9-9-215(a)(1), because she was barred from filing her custody/visitation action by the one-year statute of limitations found in subsection (b) of this section as she clearly was challenging the effect of the adoption decree by claiming visitation rights. *Tate v. Bennett*, 341 Ark. 829, 20 S.W.3d 370 (2000).

It was error for the trial court to deny a motion to dismiss a petition for adoption without a hearing on the merits, notwithstanding that the motion was filed more than one year after the grant of a temporary order of adoption, since there was a question of fact as to whether the petitioner had taken custody of the child.

Coker v. Child Support Enforcement Unit, 69 Ark. App. 293, 12 S.W.3d 669 (2000).

Failure to give a natural parent the required notice of an adoption proceeding in which the parent's parental rights were terminated allowed the parent to have the decree set aside after the expiration of the limitations period in subsection (b) of this section, even though the parent gained actual knowledge of the termination, albeit after the fact, before expiration of the limitations period. *Mayberry v. Flowers*, 347 Ark. 476, 65 S.W.3d 418 (2002).

Trial court correctly focused on whether an adoptive father had taken custody of the children and found that, in addition to physical custody being with the adoptive father and biological mother, the adoptive father also assumed parental duties; thus, the biological father's petition to set aside the adoption decree, which was filed more than one year after the decree was entered, was time-barred under subsection (b) of this section. *Carr v. Millar*, 86 Ark. App. 292, 184 S.W.3d 470 (2004).

Trial court did not err in finding that a mother's petition to set aside the interlocutory adoption decree with respect to her minor children was not barred by the one-year limitation period in this section, as the action was commenced within that time period; once the action was commenced, the limitation period was tolled. *Smith v. Smith*, 2012 Ark. App. 6 (2012).

Notice.

Circuit court erred in granting the grandparents' motion to dismiss the biological parents' motion to set aside an adoption decree where there was no evidence that the parents received any notice of the adoption proceedings before the entry of the decree, and a dependency-neglect proceeding merely provided notice that the parents needed to comply with the case plan to regain custody of their daughter. *Clark v. Clark*, 2017 Ark. App. 612, 535 S.W.3d 282 (2017).

Res Judicata.

In the father's second appeal seeking to set aside the adoption, it was clear that res judicata was applicable where: (1) the judgment entered by the trial court and subsequently affirmed by the appellate court finding no fraud and applying former statute of limitations was a final judgment on the merits; (2) there was no

dispute that the circuit court had jurisdiction over the petition to annul the adoption; (3) the suit was fully contested and resulted in a final judgment that was appealed to the appellate court; (4) both suits involved the same issue, namely the annulment of the adoption decree; (5) both suits involved the exact same parties; and (6) there could have been no doubt that the father had every opportunity to challenge the adoption based on the mental-defect claim in the father's first petition to annul the adoption. *McAdams v. McAdams*, 357 Ark. 591, 184 S.W.3d 24 (2004).

Standing to Appeal.

State agency did not have the exclusive right to file an action for annulment of adoption proceeding, but the mother had an equal right to file suit. *Gillen v. Edge*,

214 Ark. 776, 217 S.W.2d 926 (1949) (decision under prior law).

An outsider or stranger could not maintain a petition to annul an order of adoption, but where petitioners occupied loco parentis relationship to the children, they could maintain the petition. *Cotten v. Hamblin*, 234 Ark. 109, 350 S.W.2d 612 (1961) (decision under prior law).

Petitioner had no standing to set aside the adoption decree and was procedurally barred from proceeding where he waited more than four years to file his motion to set aside the decree. *Summers v. Griffith*, 317 Ark. 404, 878 S.W.2d 401 (1994), cert. denied, 514 U.S. 1065, 115 S. Ct. 1696, 131 L. Ed. 2d 559 (1995).

Cited: *Martin v. Martin*, 316 Ark. 765, 875 S.W.2d 819 (1994).

9-9-217. Confidentiality of hearings and records.

(a) Notwithstanding any other law concerning public hearings and records:

(1)(A) All hearings held in proceedings under this subchapter shall be held in closed court without admittance of any person other than essential officers of the court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.

(B)(i) A member of the General Assembly may attend an adoption hearing related to a juvenile case that is held under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., unless the court excludes the member of the General Assembly based on the:

(a) Best interest of the child; or

(b) Court's authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Except as otherwise provided by law, a member of the General Assembly who attends a hearing in accordance with subdivision (a)(1)(B)(i) of this section shall not redisclose information obtained during his or her attendance at the hearing.

(C)(i)(a) A Child Welfare Ombudsman may attend an adoption hearing related to a juvenile case under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) However, a court may exclude the Child Welfare Ombudsman from an adoption hearing if:

(1) It is in the best interest of the child; or

(2) The reason for the exclusion is based on the authority of the court under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence.

(ii) Unless otherwise allowed by law, the Child Welfare Ombudsman shall not disclose information that he or she obtains through his or her attendance at an adoption hearing held under this subchapter; and
(2)(A) Adoption records shall be closed, confidential, and sealed unless authority to open them is provided by law or by order of the court for good cause shown.

(B)(i) When an adoption is filed or heard pursuant to the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., any portion of the court file relating to the adoption shall be maintained separately from the file of other pending juvenile matters concerning the juvenile who is the subject of the adoption or the family of the juvenile.

(ii) Once final disposition is made in the adoption proceedings, the adoption file shall be transferred from the clerk who is the custodian of juvenile records to the clerk who is the custodian of records.

(iii) The entry of the adoption decree will be entered by the clerk in the book containing adoption records.

(iv) The clerk shall assign the file a docket number, shall prepare an application for a new birth record as provided in this section, and shall maintain the file as if the case had originated as an adoption case.

(v) No filing fee shall be assessed by the clerk upon the transfer and creation of the new adoption file.

(vi) Any adoption record shall be handled as provided in this section.

(C)(i) In the event an adoption record is randomly selected to be audited for determination of compliance with requirements found in federal laws pertaining to periodic and dispositional review of foster care cases, the Administrator of Adoptions of the Department of Human Services is authorized to open the file notwithstanding any section in this subchapter prohibiting disclosure of adoption records.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the federal requirements under review.

(iii) The remainder of the record shall remain sealed. Such portions of the record that may be removed shall be returned to the sealed file upon completion of the federal audit.

(iv) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required by the federal audit in compliance with state laws and rules and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(D)(i) In the event the department has the opportunity to enhance its federal funding by a review of its adoptions records, then the administrator is authorized to open such files notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to procure and provide from this file all records pertinent to the review.

(iii) The remainder of the record shall remain sealed.

(iv) The portion of the record that may be removed shall be returned to the sealed file upon completion of the review.

(v) No one shall be permitted to review the removed portion of the record except in an official capacity, and, except for uses required to provide for the enhancement of possible federal funding in compliance with state laws and rules and federal statutes and regulations, such a person shall be bound to keep the contents of such records confidential.

(E)(i) In the event that an adoptive family contacts the department and indicates a desire for the placement of a subsequent child and no more than five (5) years have lapsed since the adoption file has been sealed, the department is authorized to unseal the adoption file notwithstanding any section in this subchapter.

(ii) It shall be the responsibility of the administrator to remove the home study from the file and make a copy of the home study.

(iii) The remainder of the file shall remain sealed.

(iv) The administrator shall return the home study to the file, which shall then be resealed.

(v) The department shall be permitted to use a copy of the original home study.

(vi) The adoptive family shall be permitted to use a copy of the original home study with a petition to adopt a subsequent child from the department if the original home study is accompanied by an update.

(b) The provisions of this section shall not prohibit the disclosure of information pursuant to § 9-9-501 et seq.

(c) All papers and records pertaining to adoptions prior to May 19, 1986, are declared to be confidential and shall be subject to disclosure only pursuant to this section.

(d)(1) All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, person, entity, or organization that handled the adoption.

(2) If the agency, person, entity, or organization that handled the adoption ceases to function, all adoption records shall be transferred to the department or another licensed agency within this state with notice to the department.

History. Acts 1986 (2nd Ex. Sess.), No. 23, §§ 2, 3; A.S.A. 1947, §§ 56-223, 56-224; Acts 1993, No. 758, § 3; 1999, No. 945, §§ 1, 2; 2003, No. 650, § 4; 2003, No. 1166, § 1; 2005, No. 1685, § 2; 2019, No. 315, §§ 708, 709; 2019, No. 329, § 2; 2019, No. 945, § 2.

A.C.R.C. Notes. Acts 2019, No. 329, § 1, provided: "Legislative intent. The General Assembly recognizes:

"(1) That it is the duty of the General Assembly to initiate intelligent legislative reform that benefits the citizens of Arkansas;

"(2) That many families in Arkansas are involved in child welfare cases with the Department of Human Services;

"(3) That these families sometimes turn to members of the General Assembly for assistance when their families are negatively affected by certain limitations in the child welfare process;

"(4) That it is important to preserve a family unit when possible;

"(5) That the General Assembly's ability to initiate legislative reform with regard to child welfare is impeded by the nontransparent nature of child welfare proceedings, closed juvenile hearings, and other protections that prevent the General Assembly from adequately observing and reviewing the child welfare process; and

"(6) That in order to intelligently initiate reform, the General Assembly requires an expansion of its ability to observe and review all aspects of the child welfare process."

Acts 2019, No. 945, § 1, provided: "Legislative intent. It is the intent of the General Assembly to create a Child Welfare Ombudsman Division within the Arkansas Child Abuse/Rape/Domestic Violence Commission to provide for independent oversight of the child welfare system in Arkansas."

Publisher's Notes. Acts 1986 (2nd Ex. Sess.), No. 23, § 1, provided, in part, that the repeal, by Acts 1985, No. 957, of Acts 1977, No. 735, § 17, as amended by Acts 1985, Nos. 423 and 673, was an obvious error causing confusion as to the confidentiality of adoption proceedings and re-

ords, and further provided that it was the purpose of Acts 1986 (2nd Ex. Sess.), No. 23, to reenact the provisions of Acts 1977, No. 735, § 17, as amended by Acts 1985, Nos. 423 and 673, with the addition of a provision to recognize disclosures of adoption information pursuant to Acts 1985, No. 957.

Amendments. The 2019 amendment by No. 315 inserted "laws and rules" in (a)(2)(C)(iv) and (a)(2)(D)(v).

The 2019 amendment by No. 329 added the (a)(1)(A) designation; and added (a)(1)(B).

The 2019 amendment by No. 945 added the (a)(1)(A) designation; and added (a)(1)(B) (now (a)(1)(C)).

Cross References. Voluntary Adoption Registry, § 9-9-501 et seq.

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ALR. Restricting access to judicial records of concluded adoption proceedings. 103 A.L.R.5th 255.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

CASE NOTES

Appeals.

Although this subchapter does not govern appeals of adoption cases, the court has closed records in adoption cases following the spirit of this section. In re K.F.H., 310 Ark. 53, 834 S.W.2d 647 (1992).

Cited: Ark. Dep't of Human Servs. v. Hardy, 316 Ark. 119, 871 S.W.2d 352 (1994); Ark. Best Corp. v. General Elec. Capital Corp., 317 Ark. 238, 878 S.W.2d 708 (1994); Dougan v. Gray, 318 Ark. 6, 884 S.W.2d 239 (1994).

9-9-218. Recognition of foreign decrees affecting adoption.

A decree of court terminating the relationship of parent and child or establishing the relationship by adoption issued pursuant to due process of law by a court of any other jurisdiction within or without the United States shall be recognized in this state. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree were issued by a court of this state.

History. Acts 1977, No. 735, § 18; A.S.A. 1947, § 56-218.

9-9-219. Application for new birth record.

Upon entry of a final decree of adoption or an interlocutory decree of adoption that does not require a subsequent hearing, the clerk of the

court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the Division of Vital Records for statistical purposes. The division may issue a birth certificate for any child born in a place whose law does not provide for the issuance of a substituted certificate.

History. Acts 1977, No. 735, § 19; A.S.A. 1947, § 56-219; Acts 2007, No. 539, § 5.

9-9-220. Relinquishment and termination of parent and child relationship.

(a) With the exception of the duty to pay child support, the rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this section. The duty of a parent to pay child support shall continue until an interlocutory decree of adoption is entered.

(b) All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by an adult parent, subject to the court's approval.

If the parent is a minor, the writing shall be signed by a guardian ad litem who is appointed to appear on behalf of the minor parent for the purpose of executing such a writing. The signing shall occur in the presence of a representative of an agency taking custody of the child, or in the presence of a notary public, whether the agency is within or without the state, or in the presence and with the approval of a judge of a court of record of this state or any other state in which the minor was present at the time it was signed. The relinquishment shall be executed in the same manner as for a consent to adopt under § 9-9-208.

(1)(A) The relinquishment may be withdrawn within ten (10) calendar days, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, five (5) calendar days after it is signed or the child is born, whichever is later.

(i) Notice of withdrawal shall be given by filing an affidavit with the probate division clerk of the circuit court in the county designated by the writing as the county in which the guardianship petition will be filed if there is a guardianship, or where the petition for adoption will be filed, if there is no guardianship. If the ten-day period, or, if a waiver of the ten-day period is elected under subdivision (b)(3) of this section, the five-day period ends on a weekend or legal holiday, the person may file the affidavit the next working day.

(ii) No fee shall be charged for the filing of the affidavit.

(B) The relinquishment shall state that the parent has this right of withdrawal and shall provide the address of the probate division clerk

of the circuit court in which the guardianship will be filed if there is a guardianship, or where the petition for adoption will be filed if there is no guardianship; or

(2) In any other situation, if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

(3) The relinquishment shall state that the person may waive the ten-day period for the withdrawal of relinquishment for an adoption and to elect to limit the maximum time for the withdrawal of relinquishment for an adoption to five (5) days.

(c) In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued under this subchapter on any ground provided by other law for termination of the relationship, or on the following grounds:

(1) Abandonment as defined in § 9-9-202(7).

(2) Neglect or abuse, when the court finds the causes are irremediable or will not be remedied by the parent.

(A) If the parents have failed to make reasonable efforts to remedy the causes and such failure has occurred for twelve (12) months, such failure shall raise the rebuttable presumption that the causes will not be remedied.

(B) If the parents have attempted to remedy the causes but have failed to do so within twelve (12) months, and the court finds there is no reasonable likelihood the causes will be remedied by the eighteenth month, the failures shall raise the rebuttable presumption that the causes will not be remedied.

(3) That in the case of a parent not having custody of a child, his or her consent is being unreasonably withheld contrary to the best interest of the child.

(d) For the purpose of proceeding under this subchapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption proceeding other than as provided in this section.

(e) A petition for termination of the relationships of parent and child made in connection with an adoption proceeding may be made by:

(1) Either parent if termination of the relationship is sought with respect to the other parent;

(2) The petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child or the attorney ad litem for the child;

(3) An agency; or

(4) Any other person having a legitimate interest in the matter.

(f)(1) The petition shall be filed and service obtained according to the Arkansas Rules of Civil Procedure.

(2) Before the petition is heard, notice of the hearing and the opportunity to be heard shall be given the parents of the child, the guardian of the child, the person having legal custody of the child, a person appointed to represent any party in this proceeding, and any person granted rights of care, control, or visitation by a court of competent jurisdiction.

(g) Notwithstanding the provisions of subsection (b) of this section, a relinquishment of parental rights with respect to a child executed under this section may be withdrawn by the parent, and a decree of a court terminating the parent-child relationship under this section may be vacated by the court upon motion of the parent if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

History. Acts 1977, No. 735, § 20; 1985, No. 879, §§ 2-4; A.S.A. 1947, § 56-220; Acts 1991, No. 774, § 5; 1991, No. 1214, § 2; 1995, No. 1184, § 22; 1995, No. 1284, § 2; 1995, No. 1335, § 6; 1997, No. 1227, § 15; 1999, No. 518, § 2; 1999, No. 945, § 3; 2001, No. 1779, § 1; 2003, No. 1185, § 8; 2003, No. 1743, § 1; 2009, No. 219, § 1; 2009, No. 230, § 2.

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Parents’ mental illness or mental deficiency as ground for termination of parental rights — Applicability of Americans With Disabilities Act. 119 A.L.R.5th 351.

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Parents’ Physical Illness or Physical Deficiency as Ground for Termination of

Parental Rights — Applicability of Americans with Disabilities Act. 27 A.L.R.7th Art. 1 (2018).

U. Ark. Little Rock L.J. Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

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CASE NOTES

ANALYSIS

- In General.
- Construction.
- Appellate Review.
- Custody.
- Imprisonment.
- Jurisdiction.
- Revocation.
- Termination by Court Order.
- Unreasonable Withholding of Consent.

In General.

The natural relationship between parent and child is subject to absolute sever-

ance in an adoption proceeding; however, the courts are inclined to favor the maintaining of the natural relationship when the adoption is sought without the consent of a parent and against his or her protest. *Lindsey v. Ketchum*, 10 Ark. App. 128, 661 S.W.2d 453 (1983).

Construction.

Section 9-9-208 and this section are mutually exclusive, in that they address separate methods by which a child may be adopted and provide different means by which the relinquishment of consent or direct consent may be withdrawn. In re

Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Sections 9-9-208 and 9-9-209 are mutually exclusive from this section in obtaining the relinquishment of consent or consent to an adoption, and either one or the other should be employed based on the applicable circumstances of the adoption; and the use of both relinquishment of parental rights and consent provisions in the affidavit and consent of natural mother document was in contravention of these sections. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Local rule imposed by chancellor blending the different statutory consent requirements of § 9-9-208 and this section was inappropriate. In re Parsons, 302 Ark. 427, 791 S.W.2d 681 (1990).

Former subdivisions of this section were not effective on the date that the father's child support order was entered and, therefore, the statute was not applicable to the father's case; the legislature intended for those non-custodial parents whose child support orders were entered after August 13, 2001, to be affected, such that the statute was meant to apply prospectively from August 31, 2001, not retroactively to May 31, 2001, the date the divorce decree was entered. Stroud v. Cagle, 87 Ark. App. 95, 189 S.W.3d 76 (2004) (decision under prior law).

Appellate Review.

Couple challenged the denial of a petition for adoption, arguing that the circuit court erred in permitting the birth mother to withdraw her relinquishment of her rights outside the time permitted by the statute, but the merits could not be decided because the couple failed to challenge the finding that adoption was not in the child's best interests. Clark v. Hall (In re I.C.), 2014 Ark. App. 513 (2014).

Custody.

It was not unconscionable for the trial court to consider a putative father as "a parent not having custody" within the meaning of subdivision (c)(3) of this section, despite the putative father's contention that he should not be considered as a noncustodial parent because he surrendered his child pursuant to a court order rather than voluntarily. Wineman v. Brewer, 280 Ark. 527, 660 S.W.2d 655 (1983).

Trial court did not err in terminating a father's parental rights to his child after his wife gave the baby up for adoption because the father did not have custody within the meaning of subdivision (c)(3) of this section, due to his frequently living with his parents rather than his wife and his failure to support or even see the baby. D.L.R. v. N.K., 2012 Ark. App. 316, 416 S.W.3d 274 (2012).

Imprisonment.

Father was not unfit simply because he was incarcerated, and there was no evidence that he posed a risk to his son, rather, evidence showed that he purchased clothing for his son before he was born and had consistently sought contact with his son even while incarcerated, which were actions consistent with a parent who was making a good-faith effort to discharge his parental duties; there were no facts showing that the child would suffer any untoward effect by allowing him to establish a relationship with his father, and there was no evidence showing that the child would be adversely affected by knowledge of or association with his father, thus, the trial court's order granting the guardian's adoption petition and terminating the father's rights was reversed. Henderson v. Callis, 97 Ark. App. 163, 245 S.W.3d 174 (2006).

Jurisdiction.

In a proceeding seeking to set aside a prior divorce decree adjudicating a purported father the legal parent of a minor child, a trial court lacked authority to terminate the father's parental rights because the action did not concern adoption. Hudson v. Kyle, 352 Ark. 346, 101 S.W.3d 202 (2003).

Revocation.

Even in the case of a final adoption decree, consent to adopt may be withdrawn upon a proper showing of fraud, duress or intimidation. Dale v. Franklin, 22 Ark. App. 98, 733 S.W.2d 747 (1987).

Where both relinquishment of parental rights and consent provisions were contained in the same document purporting to sanction the adoption of a minor child and the trial court included the ten day right to withdraw provision in its decree of adoption, the document was, in the main, a relinquishment of parental rights as embodied in this section and natural

mother's revocation of her relinquishment five days after she signed the affidavit was effective. *In re Parsons*, 302 Ark. 427, 791 S.W.2d 681 (1990).

Circuit court clearly erred in failing to set aside an adoption decree; although the face of the relinquishment affidavit attached to the adoption petition reflected that the biological mother may well have signed it, the text messages and testimony showed that the mother believed that the document gave a friend the temporary ability to care for the child, that she wanted to proceed with an adoption, if at all, with the misunderstanding that the friend would adopt the child and she would share custody, and that she had never met nor communicated with the adoptive couple. *Thompson v. Brunck*, 2018 Ark. App. 198, 545 S.W.3d 830 (2018).

Termination by Court Order.

This section does not require a separate petition for termination of parental rights but allows the parental relationship to be terminated by a court order in connection with an adoption proceeding if the requisite grounds are satisfied. *Wineman v. Brewer*, 280 Ark. 527, 660 S.W.2d 655 (1983).

While the primary consideration in adoption proceeding is the welfare of the child, this does not mean that courts can sever the parental rights of nonconsenting parents and order adoption merely because the adoptive parents might be able to provide a better home. *Lindsey v. Ketchum*, 10 Ark. App. 128, 661 S.W.2d 453 (1983).

While the primary consideration is the welfare of the child, the court cannot sever the parental rights of nonconsenting parents and order adoption merely because the adoptive parents might be able to provide a better home. *In re Milam*, 27 Ark. App. 100, 766 S.W.2d 944 (1989).

Parent's consent to the adoption of the parent's child was not required because for years the child suffered irremediable abuse and neglect at the hands of the parent, who was addicted to alcohol, and the adoption of the child was in the child's best interest. *Ducharme v. Gregory*, 2014 Ark. App. 268, 435 S.W.3d 14 (2014).

Unreasonable Withholding of Consent.

Evidence sufficient to find that parent unreasonably withheld consent to child's

adoption. *Lindsey v. Ketchum*, 10 Ark. App. 128, 661 S.W.2d 453 (1983); *In re Titsworth*, 11 Ark. App. 197, 669 S.W.2d 8 (1984).

Psychological studies of the natural father and evidence of his antisocial behavior prior to the birth of his child were admissible in determining whether he unreasonably withheld his consent to adoption contrary to the best interests of the child. *In re K.M.C.*, 333 Ark. 95, 62 Ark. App. 95, 969 S.W.2d 197 (1998).

Record contained no showing that a father unreasonably withheld his consent to an adoption by a guardian where the father had no obligation to consent merely because he was incarcerated or because the guardian did not want to communicate or have the child exposed to him; further, even if the father had consented to the guardianship, he would not have forfeited his parental rights in so doing and, thus, the trial court's order granting the guardian's adoption petition and terminating the father's rights was reversed. *Henderson v. Callis*, 97 Ark. App. 163, 245 S.W.3d 174 (2006).

Trial court's decision that the father unreasonably withheld consent and that it was in the child's best interest to be adopted by the adoptive parents was not against the preponderance of the evidence, which included evidence that the father was marginally self-sufficient while the adoptive parents had stable employment and housing. *T.R. v. L.H.*, 2015 Ark. App. 483 (2015).

Bifurcation of proceedings under a stepmother's adoption petition into a hearing on whether the consent of the children's mother to the adoption was necessary and a hearing on whether the adoption was in the children's best interest did not deny the stepmother due process because (1) the stepmother did not object to the procedure, (2) once it was determined that the mother's consent was required, a best interest finding was unnecessary, and (3) the stepmother did not preserve the issue of whether the mother was unjustifiably withholding her consent, as the adoption petition only alleged the mother's consent was not required. *Hrdlicka v. Hrdlicka* (In re Adoption of P.H.), 2020 Ark. App. 178, 598 S.W.3d 846 (2020).

Cited: *Temple v. Tucker*, 277 Ark. 81, 639 S.W.2d 357 (1982); *Loveless v. May*, 278 Ark. 127, 644 S.W.2d 261 (1983); *Lind-*

sey v. Ketchum, 10 Ark. App. 128, 661 S.W.2d 453 (1983); In re Proposed Local Rules, 284 Ark. 133, 682 S.W.2d 452 (1984); Corley v. Ark. Dep't of Human Servs., 46 Ark. App. 265, 878 S.W.2d 430 (1994); Vice v. Andrews, 328 Ark. 573, 945 S.W.2d 914 (1997); Batiste v. Ark. Dep't of Human Servs., 361 Ark. 46, 204 S.W.3d 521 (2005); Marshall v. Rubright, 2017 Ark. App. 548 (2017).

9-9-221. Uniformity of interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History. Acts 1977, No. 735, § 21; A.S.A. 1947, § 56-221.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

9-9-222. Repeal and effective date.

(a) The following acts and laws and parts of laws in conflict herewith are repealed as of the effective date of this subchapter:

- (1) Acts 1947, No. 369;
- (2) Acts 1953, No. 254;
- (3) Acts 1953, No. 265;
- (4) Acts 1969, No. 303, § 17.

(b) Any adoption or termination proceedings pending on the effective date of this subchapter are not affected thereby.

History. Acts 1977, No. 735, § 22. was signed by the Governor on March 24, 1977, and took effect on July 6, 1977.
Publisher's Notes. Acts 1977, No. 735

9-9-223. Termination of rights of nonparental relatives.

Except as provided in this subchapter with regard to parental rights, any rights to a child which a nonparental relative may derive through a parent or by court order may, if the best interests of the child so require, be terminated in connection with a proceeding for adoption or for termination of parental rights.

History. Acts 1985, No. 879, § 5; A.S.A. 1947, § 56-222.

9-9-224. Child born to unmarried mother.

In all cases involving a child born to a mother unmarried at the time of the child's birth, the following procedure shall apply:

(a) Upon filing of the petition for adoption and prior to the entry of a decree for adoption a certified statement shall be obtained from the Putative Father Registry stating:

(1) The information contained in the registry in regard to the child who is the subject of the adoption; or

(2) That no information is contained in the registry at the time the petition for adoption was filed.

(b) When information concerning the child is contained in the registry at the time of the filing of the petition for adoption, notice of the adoption proceedings shall be served on the registrant unless waived by the registrant in writing signed before a notary public. All confidential information regarding the adoptive parents and the child to be adopted shall be removed from the notice prior to being served to the registrant. Service of notice under this section shall be given in accordance with the Arkansas Rules of Civil Procedure, except that notice by publication shall not be required.

(c) Upon receipt of notice, the registrant, if he wishes to appear and be heard, shall file a responsive pleading within the time limits set in the Arkansas Rules of Civil Procedure.

History. Acts 1989, No. 496, § 7; 1999, No. 1229, § 1.

Cross References. Putative Father Registry, § 20-18-701 et seq.

RESEARCH REFERENCES

Ark. L. Notes. Sampson, Coats, & Barger, Arkansas' Putative Father Registry and Related Adoption Code Provisions: Inadequate Protection for Thwarted Putative Fathers, 1997 Ark. L. Notes 49.

Ark. L. Rev. Tiffany N. Godwin, Comment: Does Father Know Best? Arkansas's Approach to the "Thwarted" Putative Father, 67 Ark. L. Rev. 989 (2014).

CASE NOTES

ANALYSIS

Grandparents.
Putative Fathers.

Grandparents.

This section does not require that notice be given to the maternal grandparents of a child where the biological mother has consented to the adoption, and nothing in this statute applies to grandparents. *Henry v. Buchanan*, 364 Ark. 485, 221 S.W.3d 346 (2006).

Putative Fathers.

Where the putative father and the child's mother had a brief romantic rela-

tionship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

Cited: *In re Reeves*, 309 Ark. 385, 831 S.W.2d 607 (1992).

SUBCHAPTER 3 — CHILDREN IN PUBLIC CUSTODY — CONSENT TO ADOPTION

SECTION.

9-9-301. Adoptions under prior law validated.

SECTION.

9-9-302. [Repealed.]

9-9-303. [Repealed.]

SECTION.

9-9-304. [Repealed.]

Preambles. Acts 1977, No. 195 contained a preamble which read: "Whereas, Section 12 of Act 215 of 1911 set out a procedure whereby a guardian with power to consent to adoption may consent to the legal adoption of a child in the State of Arkansas; and

"Whereas, Section 20 of Act 369 of 1947 authorized the Public Welfare Department to be appointed guardian of a child with power to consent to adoption in accordance with the procedures outlined in Section 12 of Act 21 of 1911; and

"Whereas, Act 451 of 1975 repealed Section 12 of Act 215 of 1911 and did not

reenact Section 12 of Act 215 of 1911 into the new Juvenile Code of 1975 because the guardianship procedures were no longer a function of the Juvenile Court but a function of the Probate Court; and

"Whereas, the legislature had no intention of repealing the procedure that had been authorized in Arkansas under Section 12 of Act 215 of 1911; and

"Whereas, it is the intention of the legislature that the procedure for the appointment of a guardian with power to consent to adoption continue in this State;

"Now therefore"

9-9-301. Adoptions under prior law validated.

All adoptions that have been granted by the probate courts of this state under authority of Acts 1947, No. 369, § 7 [repealed], when the guardian appointed was appointed under the guardianship procedures outlined under Acts 1911, No. 215, § 12 [repealed] and Acts 1947, No. 369, § 20 [repealed], are confirmed and made valid.

History. Acts 1977, No. 195, § 4; A.S.A. 1947, § 56-129.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

9-9-302. [Repealed.]

Publisher's Notes. This section, concerning the authority to serve as guardian, was repealed by Acts 1989, No. 273,

§ 47. The section was derived from Acts 1977, No. 195, § 1; A.S.A. 1947, § 56-126; Acts 1987, No. 778, § 1.

9-9-303. [Repealed.]

Publisher's Notes. This section, concerning administrative reviewers of petitions for appointment of guardian, was repealed by Acts 2013, No. 1152, § 4. The

section was derived from Acts 1977, No. 195, § 2; 1985, No. 322, § 1; 1985, No. 424, § 1; A.S.A. 1947, § 56-127; Acts 1987, No. 778, § 2; 1989, No. 273, § 47.

9-9-304. [Repealed.]

Publisher's Notes. This section, concerning the requirement of court findings, was repealed by Acts 1989, No. 273, § 47.

The section was derived from Acts 1977, No. 195, § 3; 1980 (1st Ex. Sess.), No. 66, § 1; A.S.A. 1947, § 56-128.

SUBCHAPTER 4 — ARKANSAS SUBSIDIZED ADOPTION ACT

SECTION.

- 9-9-401. Title.
- 9-9-402. Definitions.
- 9-9-403. Purpose.
- 9-9-404. Administration — Funding.
- 9-9-405. Promulgation of rules.
- 9-9-406. Records confidential.
- 9-9-407. Eligibility.
- 9-9-408. Subsidy agreement required — Commencement of subsidy.

SECTION.

- 9-9-409. Subsidy amounts.
- 9-9-410. Subsidy agreements — Duration.
- 9-9-411. Subsidy agreements — Renewal, termination, or modification.
- 9-9-412. Appeals.

Preambles. Acts 1979, No. 1109 contained a preamble which read: "Whereas, there are increasing numbers of children with special needs who are available for adoption but for whom Arkansas Social Services is unable to find adoptive homes because the children have physical, mental or emotional handicaps, or are children of minority groups, or older children, or are sibling groups that entail considerable expense on the part of adopting couples that adopting couples are unable to assume; and,

"Whereas, many children remain in institutional care or foster care at great cost to the state and at great human cost to the children because of the financial inability of adopting parents to adopt said children; and,

"Whereas, in recognition of the special problems of children, a subsidy program of adoption has been developed in many states in a way to qualify families assum-

ing permanent responsibility for these special children;

"Now therefore"

Effective Dates. Acts 1985, No. 482, § 2: Mar. 21, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that changes in the circumstances affecting the adoptive parents who are eligible for subsidies under the provisions of Act 1109 of 1979 often necessitate adjustments in the amount of the subsidies approved in the final decree of adoption; and that the immediate passage of this Act is necessary to establish procedures for changing the amount of such subsidies in an expeditious manner to serve the needs of the adoptive parents and the child involved. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

9-9-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Subsidized Adoption Act" and includes only state-funded adoptions.

History. Acts 1979, No. 1109, § 8; A.S.A. 1947, § 56-137; Acts 1999, No. 945, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

CASE NOTES

Cited: *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

9-9-402. Definitions.

As used in this subchapter:

- (1) "Child" means a minor as defined by Arkansas law; and
- (2) "Special needs" means a child who is not likely to be adopted by reason of one (1) or more of the following conditions:
 - (A) The child has special needs for medical or rehabilitative care;
 - (B) Age;
 - (C) A racial or ethnic factor;
 - (D) A sibling relationship; or
 - (E) A child who is at high risk for developing a serious physical, mental, developmental, or emotional condition if documentation of the risk is provided by a medical professional specializing in the area of the condition for which the child is considered at risk.

History. Acts 1979, No. 1109, § 2; A.S.A. 1947, § 56-131; Acts 1999, No. 945, § 5; 2005, No. 437, § 7.

9-9-403. Purpose.

The purpose of this subchapter is to supplement the Arkansas adoption statutes by making possible through public financial subsidy the most appropriate adoption of each child certified by the Department of Human Services as requiring a subsidy to assure adoption.

History. Acts 1979, No. 1109, § 1; A.S.A. 1947, § 56-130.

CASE NOTES

Cited: *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

9-9-404. Administration — Funding.

(a) The Department of Human Services shall establish and administer an ongoing program of subsidized adoption by persons who are determined by the department to be eligible to adopt under this subchapter.

(b) Subsidies and services for children under this program shall be provided out of funds appropriated to the department for the maintenance of children in foster care or made available to it from other sources.

History. Acts 1979, No. 1109, § 3; A.S.A. 1947, § 56-132; Acts 2005, No. 437, § 8; 2011, No. 607, § 5.

CASE NOTES

State Custody.

Administrative law judge erred in finding that children were not in the state's custody for adoption subsidy purposes because, although the children were in their aunt's physical custody, the state maintained a supervisory role over the children

through the context of the protective-services case that remained open on the children until their parents' rights were terminated. *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

9-9-405. Promulgation of rules.

(a) The Department of Human Services shall adopt rules consistent with this subchapter.

(b) The department shall adopt rules to ensure that post-adoptive services are provided to adoptive parents who seek the assistance of the department to prevent the adoption from being disrupted.

History. Acts 1979, No. 1109, § 7; A.S.A. 1947, § 56-136; Acts 2015, No. 1018, § 1.

Amendments. The 2015 amendment substituted "rules" for "regulations" in the

section heading; designated the existing language as (a); substituted "shall adopt rules" for "may promulgate regulations" in (a); and added (b).

9-9-406. Records confidential.

All records regarding subsidized adoption shall be confidential and may be opened for inspection only under the provisions of § 9-9-217.

History. Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133.

9-9-407. Eligibility.

(a) A family is initially eligible for a subsidy for purposes of adoption if:

(1)(A) No other potential adoptive family has been identified and is willing and able to adopt the child without the use of a subsidy.

(B) In the case of a child who has established significant emotional ties with prospective adoptive parents while in their care as a foster child, the Department of Human Services may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy.

(C) In the case of a child who will be adopted by members of his or her biological family, the department may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy;

(2) The department has determined the family to be eligible;

(3) The child is in the custody of the department; and

(4) The child has been determined by the department to have special needs.

(b) A child who is a resident of Arkansas when eligibility for a subsidy is certified shall remain eligible and receive a subsidy, if necessary for adoption, regardless of the domicile or residence of the adopting parents at the time of application for adoption, placement, legal decree of adoption, or thereafter.

(c) A family is eligible for a legal subsidy for purposes of adoption if:

(1) The child is in the custody of the department; or

(2)(A) The child was in the custody of the department;

(B) Legal custody was transferred to a relative or other person; and

(C) The juvenile division case remains open pending the child obtaining permanency.

History. Acts 1979, No. 1109, § 4; Acts 1999, No. 518, § 3; 2005, No. 437, 1981, No. 858, § 1; A.S.A. 1947, § 56-133; § 9; 2011, No. 607, § 6.

9-9-408. Subsidy agreement required — Commencement of subsidy.

(a) When parents are found and approved for adoption of a child certified as eligible for a subsidy and before the final decree of adoption is issued, there must be a written agreement between the family entering into the subsidized adoption and the Department of Human Services.

(b)(1) Adoption subsidies, the amount of which in individual cases shall be determined through agreement between the adoptive parents and the department but shall be no more than the current foster care board rate, may commence with the adoption placement or at the appropriate time after the adoption decree and may vary with the circumstances of the adopting parents and the needs of the child as well as the availability of other resources to meet the child's needs.

(2)(A) In the case of the special needs child whose eligibility is based on a high risk for development of a serious physical, mental, developmental, or emotional condition, the adoption subsidy agreement shall not provide for an adoption subsidy until the child actually develops the condition.

(B) A subsidy payment shall not be made until adequate documentation is submitted by the adoptive parents to the department showing that the child has now developed the condition.

(C) Upon acceptance by the department that the child has developed the condition, the adoption subsidy shall be retroactive to the

date the adoptive parents submitted adequate documentation that the child developed the condition.

(c)(1) When a child is determined to have a causative preexisting condition which was not identified or known prior to the final decree of adoption and which has resulted in a severe medical or psychiatric condition that requires extensive treatment, hospitalization, or institutionalization, an adoption subsidy may be approved.

(2) Upon the approval of the subsidy, the adoptive parents shall also be entitled to receive retroactive subsidy payments for the two (2) months prior to the date such subsidy was approved.

(3) This subsection will apply only to adoptive placements made on or after April 28, 1979.

History. Acts 1979, No. 1109, § 5; Acts 1993, No. 800, § 1; 2005, No. 437, 1985, No. 482, § 1; A.S.A. 1947, § 56-134; § 9[10]; 2011, No. 607, § 7.

9-9-409. Subsidy amounts.

(a) The amount of the subsidy may be readjusted periodically with the concurrence of the adopting parents, which may be specified in the adoption subsidy agreement, depending upon a change in circumstances.

(b) The subsidy may be for special services not covered by any other available resource, which include health or education services. To ensure the services remain appropriate, the services will be reviewed periodically.

(c) The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for the child under foster family care or, in the case of a special service, the reasonable fee for the service rendered.

History. Acts 1979, No. 1109, § 5; 1985, No. 482, § 1; A.S.A. 1947, § 56-134; Acts 1999, No. 945, § 6.

9-9-410. Subsidy agreements — Duration.

(a)(1) The subsidy agreement shall be binding and constitute an obligation against the State of Arkansas until the adopted child reaches the age of eighteen (18) years or the benefits available to him or her under the subsidy agreement are provided by other state or federal programs or the adoptive parents no longer qualify for a subsidy under the current rules for subsidized adoptions.

(2)(A) The adoptive parents shall immediately notify the Department of Human Services when the adopted child is no longer under the care of the adoptive parents.

(B) The department shall review the adoption subsidy agreement and determine if the adoption subsidy shall be terminated when the adoptive parent is no longer legally responsible for providing care and support for the adopted child.

(b) If funding for the subsidized program is discontinued, all contracts that have been executed under this section and §§ 9-9-408 and 9-9-411 shall continue to be honored and shall be a valid claim against the State of Arkansas in keeping with the original subsidy agreement as long as eligibility for the subsidy continues under § 9-9-411.

(c) The subsidy agreement may be extended until the age of twenty-one (21) years if the child has a documented disability or condition that prevents the child from existing independently from the adoptive family. To be eligible for the extended subsidy, the family of the child must have applied for supplemental security income benefits prior to the child's turning eighteen (18) years and have been denied.

History. Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133; Acts 1999, No. 945, § 7; 2015, No. 1018, § 2.

Amendments. The 2015 amendment redesignated (a) as (a)(1); deleted "and regulations" following "current rules" in (a)(1); and added (a)(2).

9-9-411. Subsidy agreements — Renewal, termination, or modification.

(a)(1)(A) When subsidies are for more than one (1) year, the adoptive parents shall present an annual sworn certification that the adopted child remains under their care and that the condition that caused the child to be certified continues to exist.

(B) An adoptive parent commits the offense of providing a false statement if the adoptive parent certifies that the adopted child remains under the adoptive parent's care knowing the certification to be false.

(C) Providing a false statement under this subsection is a Class A misdemeanor.

(2) The subsidy agreement may be continued in accordance with the terms by entering into a new agreement each year but only as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues, except that, in the absence of other appropriate resources provided by law and in accordance with Arkansas rules, it may not be continued after the adopted child reaches majority.

(b) Termination or modification of the subsidy agreement may be requested by the adoptive parents at any time.

History. Acts 1979, No. 1109, § 4; 1981, No. 858, § 1; A.S.A. 1947, § 56-133; Acts 2015, No. 1018, § 3; 2019, No. 315, § 710.

redesignated (a)(1) as (a)(1)(A); and added (a)(1)(B) and (C).

The 2019 amendment substituted "rules" for "regulations" in (a)(2).

Amendments. The 2015 amendment

9-9-412. Appeals.

Any subsidy decision by the Department of Human Services which the placement agency or the adoptive parents deem adverse to the child shall be reviewable according to the provisions of § 20-76-408.

History. Acts 1979, No. 1109, § 6;
A.S.A. 1947, § 56-135.

CASE NOTES

Cited: *Batiste v. Ark. Dep't of Human Servs.*, 361 Ark. 46, 204 S.W.3d 521 (2005).

SUBCHAPTER 5 — VOLUNTARY ADOPTION REGISTRY

SECTION.

9-9-501. Definitions.

9-9-502. Penalty.

9-9-503. Registry — Establishment and maintenance.

9-9-504. Registry — Operation.

SECTION.

9-9-505. Compilation of nonidentifying history.

9-9-506. Disclosure of information.

9-9-507. Maintenance of records.

9-9-508. Rules.

Effective Dates. Acts 2003, No. 650, § 9: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that federal law only allows the Federal Bureau of Investigation to release criminal history records to certain entities, which does not include private entities as currently permitted under state law. The Department of Arkansas State Police entered into an agreement with the Federal Bureau of Investigation regarding federal fingerprint-based criminal record checks, which permits disclosure only as allowed by federal law, with a grace period from the Federal Bureau of Inves-

tigation to correct state law no later than May 1, 2003. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

9-9-501. Definitions.

As used in this subchapter:

(1) "Administrator" means the person charged with maintenance and supervision of a registry and may include the administrator's agents, employees, and designees;

(2) "Adoptee" means a person who has been legally adopted in this state;

(3) "Adoption" means the judicial act of creating the relationship of parent and child when it did not exist previously;

(4) "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption;

(5) "Adult" means a person eighteen (18) or more years of age;

(6) "Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption;

(7) “Birth parent” means:

(A) The man or woman deemed or adjudicated under laws of a jurisdiction of the United States to be the father or mother of genetic origin of a child; or

(B)(i) A putative father of a child if his name appears on the original sealed birth certificate of the child or if he has been alleged by the birth mother to be and has in writing acknowledged being the child’s biological father.

(ii) A putative father who has denied or refused to admit paternity shall be deemed not to be a birth parent in the absence of an adjudication under the laws of a jurisdiction of the United States that he is the biological father of the child;

(8) “Genetic and social history” means a comprehensive report, when obtainable, on the birth parents, siblings of the birth parents, if any, other children of either birth parent, if any, and any parents of the birth parents, that shall contain the following information:

(A) Medical history;

(B) Health status;

(C) Cause of and age at death;

(D) Height, weight, eye color, and hair color;

(E) When appropriate, levels of educational and professional achievement;

(F) Ethnic origins; and

(G) Religion, if any;

(9) “Health history” means a comprehensive report of the child’s health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological, and medical care history;

(10) “Mutual consent voluntary adoption registry” or “registry” means a place provided for in this subchapter where eligible persons may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this subchapter; and

(11) “Putative father” means any man not deemed or adjudicated under the laws of the jurisdiction of the United States to be the father of genetic origin of a child who claims or is alleged to be the father of genetic origin of the child.

History. Acts 1985, No. 957, § 1; A.S.A. 1947, § 56-138; Acts 1987, No. 1060, § 1; 2003, No. 650, § 5.

RESEARCH REFERENCES

Ark. L. Rev. Morrison & Sievers, Adoption Law in Arkansas, 53 Ark. L. Rev. 1.

U. Ark. Little Rock L. Rev. Note: Family Law—Putative Fathers and the Presumption of Legitimacy—Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights

of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Uniform Adoption Act, 26 U. Ark. Little Rock L. Rev. 408.

CASE NOTES

Cited: In re J.L.T., 31 Ark. App. 85, 788 S.W.2d 494 (1990).

9-9-502. Penalty.

(a)(1) No person, agency, entity, or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer, or judge of any court of this state shall disclose any confidential information relating to any adoption, except as provided by statute or pursuant to a court order.

(2) Any employer who knowingly or negligently allows any employee to disclose information in violation of this subchapter shall be subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this subchapter.

(b) Any person, agency, entity, or organization of any kind that discloses information in violation of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 1985, No. 957, § 3; A.S.A. 1947, § 56-140; Acts 1987, No. 1060, § 2.

Cross References. Sentence to imprisonment, § 5-4-401.

9-9-503. Registry — Establishment and maintenance.

(a)(1) A mutual consent voluntary adoption registry may be established and maintained by any licensed voluntary agency involved in an adoption.

(2) Persons eligible to receive identifying information shall work through the agency involved in the adoption. If that agency has merged or ceased operations, a successor agency may assume possession of the files for the purpose of establishing, maintaining, and operating the mutual consent voluntary adoption registry concerning those adoptions.

(3) Any licensed voluntary agency may delegate or otherwise contract with another licensed voluntary agency with expertise in post-legal adoption services to establish, maintain, and operate the registry for the delegating agency.

(4) If any agency ceasing to operate does not transfer adoption records to another licensed agency, it shall provide all records required to be maintained by law to the Department of Human Services.

(b) The department shall establish and maintain a mutual consent voluntary adoption registry for all adoptions arranged by the department or may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing postlegal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the department.

(c) The department shall keep records of every adult adoptee and birth parent reunited through the use of the mutual consent voluntary adoption registry.

History. Acts 1985, No. 957, § 6; A.S.A. 1947, § 56-143; Acts 1987, No. 1060, § 4; 2001, No. 409, § 2.

9-9-504. Registry — Operation.

(a)(1) The adult adoptee and each birth parent and each individual related within the second degree whose identity is to be disclosed may voluntarily place his or her name in the appropriate registry by submitting a notarized affidavit stating his or her name, address, and telephone number and his or her willingness to be identified solely to the other relevant persons who register.

(2) No registration shall be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with rules specified in § 9-9-508.

(3) The failure to file a notarized affidavit with the registry for any reason, except death, shall preclude the disclosure of identifying information to those persons who do register.

(b)(1)(A) Upon registering, the registrant shall participate in not less than one (1) hour of counseling with a social worker employed by the entity that operates the registry. If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(B) If a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry.

(2) When an eligible person registers concerning an adoption that was arranged through an agency that has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify, by certified mail within ten (10) business days after the date of registration, the agency that handled the adoption.

(c) In any case in which the identity of the birth father was unknown to the birth mother, or in which the administrator learns that one (1) or both birth parents are deceased, this information shall be shared with the adult adoptee. In those cases, the adoptee shall not be able to obtain identifying information through the registry, and he or she shall be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

(d) The following shall be matching and disclosure procedures:

(1) Each mutual consent voluntary adoption registry shall be operated under the direction of an administrator;

(2) The administrator shall be bound by the confidentiality requirements of this subchapter and shall be permitted reasonable access to the registry for the purposes set forth in this subchapter and for such purposes as may be necessary for the proper administration of the registry;

(3) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit that sets forth the following:

(A) The current name and address of the affiant;

(B) Any previous name by which the affiant was known;

(C) The original and adopted names, if known, of the adopted child;

(D) The place and date of birth of the adopted child; and

(E)(i) The name and address of the adoption agency or other entity, organization, or person placing the adopted child, if known.

(ii) The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit.

(iii) The registry shall have no duty to search for the affiant who fails to register his or her most recent address;

(4)(A) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents or individuals related within the second degree.

(B) The processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match;

(5) The administrator shall determine that there is a match when the adult adoptee and a birth parent or individual related within the second degree have filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in subsection (b) of this section; and

(6)(A) An agency receiving an assignment of a match under the provisions of this subchapter shall directly or by contract with a licensed adoption agency in this state notify all registrants through a direct and confidential contact.

(B) The contact shall be made by an employee or agent of the agency receiving the assignment.

(C) The employee or agent shall be a trained social worker who has expertise in postlegal adoption services.

(e)(1) Any affidavits filed and other information collected shall be retained for ninety-nine (99) years following the date of registration.

(2) Any qualified person may choose to remove his or her name from the registry at any time by filing a notarized affidavit with the registry.

(f)(1) A mutual consent voluntary adoption registry shall obtain only information necessary for identifying registrants.

(2) In no event shall the registry obtain information of any kind pertaining to the adoptive parents or any siblings to the adult adoptee who are children of the adoptive parents.

(g) All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through users' fees charged to all persons who register.

(h) Beginning January 1, 2002, the Department of Human Services shall place the affidavit form for placement on the mutual consent voluntary adoption registry on the department's website.

History. Acts 1985, No. 957, § 7; A.S.A. 6; 2001, No. 409, § 1; 2003, No. 650, § 6; 1947, § 56-144; Acts 1987, No. 1060, §§ 5, 2011, No. 793, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Family Law, Uniform Adoption Legislation, 2003 Arkansas General As- Act, 26 U. Ark. Little Rock L. Rev. 408.

9-9-505. Compilation of nonidentifying history.

(a) Prior to placement for adoption, the licensed adoption agency or, when an agency is not involved, the person, entity, or organization handling the adoption shall compile and provide to the prospective adoptive parents a detailed, written health history and genetic and social history of the child that excludes information that would identify birth parents or members of a birth parent's family and that shall be set forth in a document that is separate from any document containing such identifying information.

(b) Records containing the nonidentifying information and that are set forth on a document that is separate from any document containing identifying data:

(1)(A) Shall be retained by the agency or, when no agency is involved, by the person, entity, or organization handling the adoption, for ninety-nine (99) years.

(B)(i) If the agency or person, entity, or organization who handled the adoption ceases to function, that agency or intermediary shall transfer records containing the nonidentifying information on the adoptee to the Department of Human Services.

(ii) However, a licensed agency ceasing operation may transfer the records to another licensed agency within this state, but only if the agency transferring the records gives notice of the transfer to the department; and

(2) Shall be available upon request throughout the time specified in subdivision (b)(1) of this section, together with any additional nonidentifying information that may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent's family or the adoptee or any adoptive parent of the adoptee, to the following persons only:

(A) The adoptive parents of the child or, in the event of death of the adoptive parents, the child's guardian;

(B) The adoptee;

(C) In the event of the death of the adoptee, the adoptee's children, the adoptee's widow or widower, or the guardian of any child of the adoptee;

(D) The birth parent of the adoptee; and

(E) Any child welfare agency having custody of the adoptee.

(c) The actual and reasonable cost of providing nonidentifying health history and genetic and social history shall be paid by the person requesting the information.

History. Acts 1985, No. 957, § 8; A.S.A. 1947, § 56-145; Acts 1987, No. 1060, § 7; 2003, No. 650, § 7.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Family Law, Uniform Adoption Legislation, 2003 Arkansas General Assembly, 26 U. Ark. Little Rock L. Rev. 408.

9-9-506. Disclosure of information.

(a) Notwithstanding any other provision of law, the information acquired by any registry shall not be disclosed under any sunshine or freedom of information legislation, rules, or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including any agency, may file a class action to force the registry to disclose identifying information.

(c) In exceptional circumstances, specified papers and records pertaining to particular adoptions may be inspected by the adoptee, the adoptive parents, and the birth parents if the court granting the adoption finds by clear and convincing evidence that good cause exists for the inspection.

History. Acts 1985, No. 957, § 4; A.S.A. 1947, § 56-141.

9-9-507. Maintenance of records.

All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, entity, organization, or person arranging the adoption.

History. Acts 1985, No. 957, § 2; A.S.A. 1947, § 56-139.

9-9-508. Rules.

The Department of Human Services shall issue such rules as are necessary for implementing this subchapter.

History. Acts 1985, No. 957, § 5; A.S.A. 1947, § 56-142; Acts 1987, No. 1060, § 3; 2019, No. 315, § 711.

Amendments. The 2019 amendment deleted “and regulations” following “Rules” in the section heading and in the text.

SUBCHAPTER 6 — LEGAL REPRESENTATION

SECTION.

9-9-601. The Governor’s Pro Bono Adoption Service Award.

Cross References. Attorneys at law,
§ 16-22-101 et seq.

9-9-601. The Governor’s Pro Bono Adoption Service Award.

- (a) The Governor shall award the Governor’s Pro Bono Adoption Service Award by proclamation in recognition of the efforts and sacrifice of those attorneys who provide adoption services on a volunteer basis.
- (b) Those receiving the Governor’s Pro Bono Adoption Service Award shall be selected from a list of names that may be submitted annually to the Governor by judges, attorneys, the Department of Human Services, and other related organizations, agencies, and professional associations.

History. Acts 2001, No. 1273, § 1.

SUBCHAPTER 7 — THE STREAMLINE ADOPTION ACT

SECTION.

9-9-701. Streamlined adoptions by the
Department of Human
Services.

SECTION.

9-9-702. Fast-tracked adoption of Gar-
rett’s Law babies — Defi-
nition.

9-9-701. Streamlined adoptions by the Department of Human Services.

- (a)(1) A family who adopts a child from the Department of Human Services shall be eligible for the streamlined adoption process if the family chooses to adopt another child from the department and the department selects the family to be the adoptive parents of a child in the custody of the department.
- (2) The adoptive family is not eligible for the streamlined adoption process if more than five (5) years have passed since the adoptive family finalized the adoption of a child placed by the department in the adoptive home.
- (b) Upon contact by the adoptive family, the department shall:
 - (1)(A) Obtain a copy of the original home study completed on the adoptive family.
 - (B) If needed, the department shall unseal the adoption file from the previous adoption pursuant to § 9-9-217(a) in order to obtain a copy of the original home study on the adoptive family; and
 - (2) Complete an update to the original home study within forty-five (45) business days from contact by the adoptive family.

(c) The adoptive family shall be required to obtain updated criminal background checks and central registry checks as outlined in this chapter.

(d) The department shall not require the adoptive family to attend training.

(e) The department shall place the adoptive family in the pool of waiting adoptive families eligible to adopt a child from the department upon:

(1) Completion of the updated home study that is favorable; and

(2) Receipt of the:

(A) Criminal background check; and

(B) Central registry check.

(f)(1) A family who has a foster child in its home who was placed by the department shall be eligible for the streamlined adoption process if the department selects the foster family to be the adoptive family of the foster child.

(2) Upon selection, the department shall complete the adoptive home study within forty-five (45) business days.

(3) The department shall not require the foster family to attend training.

History. Acts 2005, No. 1685, § 1;
2007, No. 539, § 6.

9-9-702. Fast-tracked adoption of Garrett's Law babies — Definition.

(a) As used in this section, "newborn" means an infant who is thirty (30) days of age or younger.

(b) If a report of neglect under § 12-18-103(14)(B) is made to the Child Abuse Hotline, the mother has the option to place the newborn for:

(1) Adoption through a licensed child placement agency as defined in § 9-28-402(7); or

(2) A private adoption with a person licensed to practice medicine or law.

(c) If a newborn is taken into the custody of the Department of Human Services as the result of a call to the hotline of neglect under § 12-18-103(14)(B), the mother has the option to place the newborn for:

(1) Adoption through a licensed child placement agency under § 9-28-402(7); or

(2) A private adoption with a person licensed to practice medicine or law.

(d)(1)(A) If the proposed adoptive family has not completed the adoptive home study process, including the required criminal background check, the newborn shall be placed in a foster home that is licensed and approved under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., or in the custody of the department.

(B) The newborn shall remain in a licensed or approved foster home or in the custody of the department until the required home study and criminal background checks are completed on the proposed adoptive parents.

(2) If the newborn is in the custody of the department, an order transferring custody to the proposed adoptive parents is required before the newborn is placed in the home of the proposed adoptive parents.

(3) If the newborn is in the custody of the department, any petition for adoption shall be filed in the open dependency-neglect case.

(4) The adoption shall be granted only if the proposed adoptive placement is in the best interests of the newborn.

(e)(1)(A) If the mother wishes for a relative to adopt her newborn, the newborn shall be placed in a foster home that is licensed and approved under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., or in the custody of the department unless the relative has a completed approved adoptive home study at the time placement is needed.

(B) If a home study has not been completed on the relative, an adoptive home study shall be completed on the proposed relative if the proposed relative is an appropriate placement for the newborn.

(C) The home study on the relative cannot be waived.

(2) The adoption by a relative of the newborn shall be denied unless:

(A) The proposed relative adoptive parents have an approved adoptive home study or the department approves the proposed relative adoptive parents to adopt under state law on adoption, child welfare agency licensing law and rules, and department policy and procedures;

(B) The court determines the proposed relative adoptive parents have the capacity and willingness to abide by orders regarding care, supervision, and custody so that child protection will not be an issue if the adoption is granted; and

(C) The court enters an order describing the level of contact, if any, which is permitted to occur between the birth parent and the proposed relative adoptive parents and the consequences for violation of the order of contact under § 5-26-502.

(f) The department shall remain involved in each placement that is made under this section to monitor whether the mother withdraws her consent to the adoption.

(g) If the mother withdraws her consent to the adoption, the department shall initiate an action to ensure the protection of the child, including without limitation taking the child into custody if custody is warranted to protect the health and safety of the child.

History. Acts 2007, No. 381, § 1; 2009, No. 474, § 1; 2009, No. 758, § 8; 2019, No. 315, § 712.

Amendments. The 2019 amendment substituted “rules” for “regulations” in (e)(2)(A).

SUBCHAPTER 8 — ADOPTION RECORDS

SECTION.

9-9-801. Definitions.

9-9-802. Birth parent redaction request and contact preference forms.

SECTION.

9-9-803. Access to adoption file.

9-9-804. Immunity.

9-9-801. Definitions.

As used in this subchapter:

(1) “Adoption file” means a file maintained by the Department of Health that contains an original birth certificate and adoption decree of an adoptee;

(2) “Genetic and social history” has the same meaning as provided under § 9-9-501; and

(3) “Requester” means a person twenty-one (21) years of age or older who requests an adoption file under § 9-9-803 and is:

(A) The adoptee to whom the adoption file requested pertains; or

(B) The child, surviving spouse, or guardian of any child of a deceased adoptee to whom the adoption file requested pertains.

History. Acts 2017, No. 519, § 1.

9-9-802. Birth parent redaction request and contact preference forms.

(a)(1)(A) The Department of Health shall create and make available on its website:

(i) A form that a birth parent may use to have his or her name redacted from the copy of an adoption file that a requester receives under § 9-9-803; and

(ii) A form that a birth parent may use to specify if a requester may contact the birth parent and the preferred manner by which a requester may contact the birth parent.

(B) The department shall make hard copies of the forms required under subdivision (a)(1)(A) of this section available to the public.

(2) The form required under subdivision (a)(1)(A)(i) of this section shall include the following:

(A) Information about the procedures and requirements for a birth parent to have the form:

(i) Placed in the adoption file of the birth parent’s offspring so that the birth parent’s name is redacted from the copy of the adoption file that a requester receives under § 9-9-803; and

(ii) Removed from the adoption file of the birth parent’s offspring so that the birth parent’s name is included in the copy of the adoption file that a requester receives under § 9-9-803;

(B) The information needed by the department to identify the adoption file of the adoptee named on a form submitted under subdivisions (a)(2)(A)(i) and (ii) of this section;

(C) An attestation by the birth parent that he or she is the birth parent of the adoptee named on the form submitted under subdivisions (a)(2)(A)(i) and (ii) of this section; and

(D) Any other information required by the department.

(3) The form required under subdivision (a)(1)(A)(ii) of this section shall include the following:

(A) Information about the procedures and requirements for a birth parent to have the form:

- (i) Placed in the adoption file of the birth parent's offspring; and
- (ii) Removed from the adoption file of the birth parent's offspring and replaced with an updated form;

(B) A section in which a birth parent may indicate whether a requester may:

- (i) Directly contact the birth parent;
- (ii) Contact the birth parent through an intermediary specified by the birth parent; or
- (iii) Not contact the birth parent directly or through an intermediary;

(C) The information needed by the department to identify the adoption file of the adoptee named on the form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section;

(D) Notification that a form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section is advisory and unenforceable;

(E) An attestation by the birth parent that he or she is the birth parent of the adoptee named on a form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section; and

(F) Any other information required by the department.

(b) The department shall accept a form submitted under this section if:

- (1) The form is notarized;
- (2) The birth parent submits satisfactory proof of his or her identity as determined by the rules of the department;
- (3)(A) The birth parent completes, corrects, or expands his or her genetic or social history.

(B) A completed, corrected, or expanded genetic or social history under subdivision (b)(3)(A) of this section is required if the birth parent's genetic or social history:

- (i) Was not previously compiled; or
- (ii) Was compiled but needs to be corrected or expanded; and

(4) A completed form submitted under this section at least substantially complies with the requirements of this section.

(c) The department shall not accept a form provided under this section that is completed and submitted by a birth parent for another birth parent.

(d) The department shall place a form submitted under this section in the adoption file of the adoptee named on the form if:

(1) The requirements of subsection (b) of this section are substantially met; and

(2) The adoption file concerns the adoptee named on the form.

(e)(1) Upon accepting a form submitted under subdivision (a)(2)(A)(ii) of this section, the department shall remove a form submitted under subdivision (a)(2)(A)(i) of this section from the adoption file of the adoptee named on the form.

(2) Upon accepting an updated form submitted under subdivision (a)(3)(A)(ii) of this section, the department shall remove a form submitted under subdivision (a)(3)(A)(i) of this section from the adoption file and place the updated form in the adoption file.

(f) The department shall maintain an electronic copy and destroy the hard copy of a form removed from an adoption file under subsection (e) of this section.

History. Acts 2017, No. 519, § 1.

9-9-803. Access to adoption file.

(a) Beginning August 1, 2018, a requester may submit a written request for a copy of an adoption file from the Department of Health.

(b)(1) A request submitted under this section shall include the requester's address and notarized signature and satisfactory proof of the requester's identity as determined by the department.

(2) If the requester is the child, widow or widower, or guardian of any child of the deceased adoptee to whom the adoption file pertains, the requester shall also provide notarized documentation evidencing the requester's relationship to the adoptee.

(c)(1) Upon receipt of a request made under subsection (a) of this section, the department shall mail the adoption file to the requester at the address provided in the request.

(2) If an adoption file contains a form submitted under § 9-9-802(a)(2)(A)(i), the department shall redact the birth parent's name from the copy of the adoption file before it is mailed to the requester.

(3) If a form under § 9-9-802(a)(2)(A)(ii) is submitted after a copy of the adoption file is mailed to the requester, the department shall mail the requester another copy of the adoption file with the birth parent's name included in the adoption file within thirty (30) days of the date the form was removed.

(4) Before mailing a requester an adoption file under subdivision (c)(1) of this section, the department shall mark the certified copy of the original birth certificate contained in the adoption file as "not intended for official use" or similar.

(d) The department shall mail a requester an adoption file by certified mail, return receipt requested.

(e)(1) If an adoption file contains a form submitted under § 9-9-802(a)(3)(A)(i) and (ii), the department shall include the form in the adoption file mailed to a requester.

(2) A form included in the adoption file under this subsection shall be redacted in accordance with subdivision (c)(2) of this section.

(f)(1) The department may charge a requester a fee of one hundred dollars (\$100) for the department's provision of the adoption file requested.

(2) The department may change the amount of the fee charged to a requester under subdivision (f)(1) of this section in accordance with the department's rules.

History. Acts 2017, No. 519, § 1.

9-9-804. Immunity.

An officer or employee of the Department of Health who releases any information contained in an adoption file or provides a copy of an adoption file to a requester is not criminally liable or civilly liable in damages to any person for injury, death, or loss allegedly arising from the release of the information or copy if the officer or employee releases the information or copy in accordance with § 9-9-803.

History. Acts 2017, No. 519, § 1.

CHAPTER 10

PATERNITY

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARTIFICIAL INSEMINATION.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-10-101. [Repealed.]
- 9-10-102. Actions governed by Arkansas Rules of Civil Procedure — Limitations periods — Venue — Summons — Transfer between local jurisdictions.
- 9-10-103. Temporary orders — Administrative orders for paternity testing.
- 9-10-104. Suit to determine paternity of child born outside of marriage.
- 9-10-105. Trial by court.
- 9-10-106. [Repealed.]
- 9-10-107. [Repealed.]
- 9-10-108. Paternity test.
- 9-10-109. Child support following finding of paternity.
- 9-10-110. Judgment for lying-in expenses — Commitment on failure to pay.

SECTION.

- 9-10-111. Judgment for child support — Bond.
- 9-10-112. Income withholding — Delinquent noncustodial parent.
- 9-10-113. Custody of child born outside of marriage.
- 9-10-114. Visitation rights of father.
- 9-10-115. Modification of orders or judgments.
- 9-10-116. [Repealed.]
- 9-10-117. [Repealed.]
- 9-10-118. [Superseded.]
- 9-10-119. Revival of judgment.
- 9-10-120. Effect of acknowledgment of paternity.
- 9-10-121. Termination of certain parental rights for putative fathers convicted of rape.

Preambles. Acts 1983, No. 437 contained a preamble which read: "Whereas, it has been brought to the attention of the Arkansas General Assembly that Section 1 of Act 473 of 1981 (Ark. Stat. 34-705.1) erroneously refers to spouses in a proceeding brought pursuant to the Bastardy Statutes, causing uncertainty in said statutes;

"Now therefore ... "

Cross References. Competent witnesses, § 16-43-901.

Effective Dates. Acts 1875 (Adj. Sess.), No. 24, § 12: effective on passage.

Acts 1879, No. 72, § 5: effective on passage.

Acts 1927, No. 111, § 2: effective on passage.

Acts 1955, No. 127, § 4: Mar. 2, 1955. Emergency clause provided: "It is hereby determined by the General Assembly that the courts of this State are called upon to render decisions in matters involving the paternity of children and that the immediate passage of this Act is necessary to provide the courts with a means of expediting such cases. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1955, No. 374, § 4: Mar. 24, 1955. Emergency clause provided: "It has been found and is declared by the General Assembly of the State of Arkansas that the laws of this State relating to bastardy proceedings are not in conformity with the modern court procedure of this State; that as a result, general confusion exists in the courts of this State; that this Act seeks to modernize these bastardy laws to conform to present court procedure. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1983, No. 177, § 2: Feb. 15, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly that the present Arkansas law governing non-support is constitutionally suspect on equal protection grounds; that there is an immediate need to remedy this law by legislative action. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the public peace, health and safety shall be full force and effect from and after its passage and approval."

Acts 1985, No. 988, § 6: Aug. 1, 1985.

Acts 1987, No. 599, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for clarification as to what fees are permitted to be charged for support collection throughout the state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989."

Acts 1991, No. 986, § 5: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that paternity of the children be established in the most expedient manner for all children of this state; and the smooth transition from current requirements of those of this act require the provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1095, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1991, is essential to the operation of the child support collection system in this state and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 396, § 7: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that a smooth transition from current requirements to those of this Act requires that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1091, § 7: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that Arkansas law gov-

erning voluntary paternity acknowledgments does not conform with current federal requirements set forth in Title IV-D of the Social Security Act; that failure to immediately remedy the law by legislative action will place Title IV-D and Aid to Families With Dependent Children funding in jeopardy. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2013, No. 210, § 3: Mar. 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that pregnancy from rape against women occurs; that women who get pregnant as a result of rape and decide to carry their pregnancy to term should not have a lifetime tethered to their rapists due to custody issues; and that this act is immediately necessary to eliminate the possibility that a rapist convicted in a court of law can have custody rights to any child conceived and born from such a rape. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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Statute limiting time for commencement of action as violating child's constitutional rights. 16 A.L.R.4th 926.

Illegitimate child's right to maintain action to determine paternity. 19 A.L.R.4th 1082.

Human Leukocyte Antigen (HLA) tissue typing tests: admissibility, weight, and sufficiency in paternity cases. 37 A.L.R.4th 167.

Admissibility and weight of blood-grouping tests in disputed paternity cases. 43 A.L.R.4th 579.

Right to jury trial in paternity proceedings. 51 A.L.R.4th 565.

Necessity or propriety of appointment of independent guardian for child who is subject of paternity proceeding. 70 A.L.R.4th 1033.

Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Admissibility of DNA identification evidence. 84 A.L.R.4th 313.

Parental rights of man who is not biological or adoptive father of child but was husband or cohabitant of mother when child was conceived or born. 84 A.L.R.4th 655.

Admissibility or compellability of blood

test to establish testee's nonpaternity for purpose of challenging testee's parental rights. 87 A.L.R.4th 572.

Rights of an unwed father to obstruct adoption of his child by withholding consent. 61 A.L.R.5th 151.

Authentication of blood sample taken from human body for purposes other than determining blood alcohol content. 77 A.L.R.5th 201.

Am. Jur. 41 Am. Jur. 2d, Illegitimate Children, § 8 et seq.

Ark. L. Rev. Some Problems of Courts for Children in Arkansas, 9 Ark. L. Rev. 23.

Bastardy, 9 Ark. L. Rev. 391.

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C.J.S. 14 C.J.S., Children Out-of-Wedlock, § 71 et seq.

U. Ark. Little Rock L.J. Sullivan, The Need for a Business or Payroll Records Affidavit for Use in Child Support Matters, 11 U. Ark. Little Rock L.J. 651.

Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

9-10-101. [Repealed.]

Publisher's Notes. This section, concerning jurisdiction and judges of chancery courts, was repealed by Acts 2003, No. 1185, § 9. The section was derived

from Acts 1875 (Adj. Sess.), No. 24, § 1, p. 25; C. & M. Dig., § 772; Pope's Dig., § 928; A.S.A. 1947, § 34-701; Acts 1989, No. 725, § 3.

9-10-102. Actions governed by Arkansas Rules of Civil Procedure — Limitations periods — Venue — Summons — Transfer between local jurisdictions.

(a) An action to establish the paternity of a child or children shall be commenced and proceed under the Arkansas Rules of Civil Procedure applicable in circuit court, as amended from time to time by the Supreme Court.

(b) Actions brought in the State of Arkansas to establish paternity may be brought at any time. Any action brought prior to August 1, 1985, but dismissed because of a statute of limitations in effect prior to that date, may be brought for any person for whom paternity has not yet been established.

(c) Venue of paternity actions shall be in the county in which the plaintiff resides or, in cases involving a juvenile, in the county in which the juvenile resides.

(d) Summons may be issued in any county of this state in which the defendant may be found.

(e)(1) Upon a default by the defendant, the court shall grant a finding of paternity and shall establish a child support order based on an application in accordance with the Arkansas Rules of Civil Procedure and the family support chart.

(2) The court's granting of a default paternity judgment shall be based on the presumed mother's affidavit of facts in which the pre-

sumed mother names the defendant as the father of her child and states the defendant's access during the probable period of conception.

(f)(1)(A) The court where the final decree of paternity is rendered shall retain jurisdiction of all matters following the entry of the decree.

(B)(i) If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court that entered the final adjudication to request that the case be transferred to another county.

(ii) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(iii) If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

(2) If the court that entered the final adjudication agrees to transfer the case to another judicial district, upon proper motion and affidavit and notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of the court in the county where the case is being transferred.

(3) An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case.

(4) Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

(5) The clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

History. Acts 1875 (Adj. Sess.), No. 24, § 2, p. 25; 1879, No. 72, § 1, p. 95; C. & M. Dig., § 773; Pope's Dig., § 929; Acts 1955, No. 127, § 2; 1983, No. 595, § 1; 1985, No. 988, § 1; A.S.A. 1947, §§ 34-702, 34-705.2; Acts 1989, No. 725, § 1; 1995, No. 1184, § 42; 1997, No. 1296, § 3; 1999, No. 539, § 2; 2003, No. 1185, § 10.

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Family Law—Putative Fathers and the Presumption of Legitimacy—Adams and the Forbidden Fruit: Clashes Between the Presumption of Legitimacy and the Rights of Putative Fathers in Arkansas, 25 U. Ark. Little Rock L. Rev. 369.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Child Support.

Dismissal.

Jury Trial.

Nature of Action.

Res Judicata.

Venue.

Constitutionality.

This section is constitutional. *Dobson v. State*, 69 Ark. 376, 63 S.W. 796 (1901).

Purpose.

Indemnity and protection of the counties against the burden of supporting the illegitimate child, and not the punishment of the father, are the objects contemplated by the statute. *Chambers v. State*, 45 Ark. 56 (1885).

Child Support.

By common law the mother and not the father of an illegitimate child is bound to support him, but this section confers on the mother of the child the right to compel the father to contribute to its support; and a promise on the father's part to contribute to the child's support is a valid legal liability and is enforceable against him or, after his death, against his estate. *Davis' Estate v. Herrington*, 53 Ark. 5, 13 S.W. 215 (1890).

In an action to enforce an unwritten promise to support and for annual payments, the recovery is limited to the last three years. *Davis' Estate v. Herrington*, 53 Ark. 5, 13 S.W. 215 (1890) (decision prior to 1985 amendment).

The mother may enforce an implied obligation of father to support illegitimate child. *Scott v. State*, 173 Ark. 625, 292 S.W. 979 (1927).

Dismissal.

Because a dismissal with prejudice is void in a paternity action, such a ruling does not bar future proceedings. *State Office of Child Support Enforcement v. Flowers*, 57 Ark. App. 223, 944 S.W.2d 558 (1997).

Jury Trial.

Since a paternity proceeding was essentially an action at law for the recovery of money, the appellant was entitled to a jury trial on the issues of fact. *Waddell v. State*, 235 Ark. 293, 357 S.W.2d 651 (1962).

Nature of Action.

Although a paternity proceeding is in the name of the state, it is of a civil nature. *Chambers v. State*, 45 Ark. 56 (1885); *Pearce v. State*, 55 Ark. 387, 18 S.W. 380 (1892); *Wimberly v. State*, 90 Ark. 514, 119 S.W. 668 (1909); *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928); *Swaim v. State*, 184 Ark. 1107, 44 S.W.2d 1098 (1932).

Res Judicata.

Decision in an annulment proceeding brought on the ground of false representation as to paternity of child is not res judicata in either a paternity or heirship action, as child is not a party privy to the annulment proceeding. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

Venue.

In a proceeding to determine the custody of a child after his mother died, venue was not proper in the county in which the father resided; instead, venue was proper in the county in which the child had resided with his mother and in which he was cared for after her death by his grandparents. *Overton v. Jones*, 74 Ark. App. 122, 45 S.W.3d 427 (2001).

Trial court erred in granting mother's motion to transfer a custody action because there was evidence that the father never established a residence outside of the first county, as contemplated by subdivision (f)(1)(B)(i) of this section. *Stephens v. Miller*, 91 Ark. App. 253, 209 S.W.3d 452 (2005).

Cited: *George v. George*, 247 Ark. 17, 444 S.W.2d 62 (1969); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983); *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985); *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

9-10-103. Temporary orders — Administrative orders for paternity testing.

(a) If the child is not born when the accused appears before the circuit court, the court may hear evidence and may make temporary orders and findings pending the birth of the child.

(b)(1)(A) If the parentage of a child has not been established, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall send a notice to the putative father, or mother, as appropriate, that he or she is a biological parent of the child.

(B) The notice shall inform the parties that the putative father and the mother of the child may sign an affidavit acknowledging paternity and that any party may request that scientifically accepted paternity testing be conducted to assist in determining the identities of the child's parents.

(2)(A) In all cases brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., upon sworn statement of the mother, putative father, or the office alleging paternity, the office shall issue an administrative order for paternity testing that requires the mother, putative father, and minor child to submit themselves for paternity testing.

(B) The office shall cause a copy of the administrative order for paternity testing to be served on the mother and putative father.

(C) Paternity testing accomplished pursuant to an administrative order shall be conducted pursuant to the guidelines and procedures set out in § 9-10-108.

(D) Any party to an administrative order for paternity testing may object to the administrative order within twenty (20) days after receiving the order and request an administrative hearing to determine if paternity testing under the administrative order should be conducted by the office.

(3) The request for paternity testing shall be accompanied by:

(A) An affidavit alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the mother and putative father; or

(B) An affidavit denying paternity and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the mother and putative father.

(4)(A) The office shall initially pay the costs of administrative paternity testing, but those costs shall be assessed against the putative father if paternity is established or against the applicant for services if the putative father is excluded as the biological father.

(B) Recovery by the office through all available processes shall be initiated, including income withholding, when appropriate.

(5) Any party who objects to the results of such paternity testing may request additional testing upon proper notice and advance payment for retesting, and the office shall assist the contestant in obtaining such additional testing as may be requested.

(6) If the results of paternity testing establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, the office may file a complaint for paternity and child support in the circuit court.

(c) Any paternity testing results obtained pursuant to an administrative order for paternity testing shall be admissible into evidence in any circuit court for the purpose of adjudicating paternity, as provided by § 9-10-108.

(d) If the results of paternity testing exclude an alleged parent from being the biological parent of the child, the office shall issue an administrative determination that declares that the excluded person is not a parent of the child.

(e) If the mother should die before the final order, the action may be revived in the name of the child, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

(f) Upon motion by a party, the court shall issue a temporary child support order in accordance with this chapter, the guidelines for child support, and the family support chart, when paternity is disputed and a judicial or administrative determination of paternity is pending, if there is clear and convincing genetic evidence of paternity.

History. Acts 1875 (Adj. Sess.), No. 24, No. 374, § 1; A.S.A. 1947, § 34-704; Acts § 4, p. 25; 1879, No. 72, § 2, p. 95; C. & M. 1997, No. 1296, § 4; 2001, No. 1248, Dig., § 775; Pope's Dig., § 931; Acts 1955, §§ 1-3; 2003, No. 1185, § 11.

CASE NOTES

Applicability.

This section applies to paternity tests ordered by the Office of Child Support Enforcement and not to tests ordered by the court; § 9-10-108 specifically deals with court-ordered paternity tests and, more importantly, while some language in this section incorporates the procedures of

§ 9-10-108, there is no language in § 9-10-108 incorporating the protections of this section. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

Cited: *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981).

9-10-104. Suit to determine paternity of child born outside of marriage.

Petitions for paternity establishment may be filed by:

- (1) A biological mother;
- (2) A putative father;
- (3) A person for whom paternity is not presumed or established by court order, including a parent or grandparent of a deceased putative father; or
- (4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

History. Acts 1981, No. 664, §§ 1, 2; No. 725, § 4; 1995, No. 1184, § 1; 2009, A.S.A. 1947, §§ 34-716, 34-717; Acts 1989, No. 1312, § 1.

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Ark. L. Rev. Brittany Horn, Case Note: Who's Your Daddy? State v. Perry and Its Impact on Paternity and the Rights of Adjudicated Fathers in Arkansas, 66 Ark. L. Rev. 1059 (2013).

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CASE NOTES

ANALYSIS

In General.
Burden of Proof.
Defenses.
Presumptions.
Procedure.
Standing.

In General.

It is not against the public policy of this state to allow a third party to attempt to illegitimize a child which was conceived, but not born during marriage. *Willmon v. Hunter*, 297 Ark. 358, 761 S.W.2d 924 (1988).

Burden of Proof.

In a paternity proceeding brought against a living putative father, even in the absence of blood testing, the mother's burden of proof is a mere preponderance of the evidence, as the proceeding is civil in nature. *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

Defenses.

A mother's agreement or assurances that she would not pursue a paternity action to request support cannot validly be interposed by a putative father as a defense. *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

Misrepresentation concerning the use of contraceptives is not a defense to paternity; to permit this defense would result in the denial of support to innocent children whom the law was designed to protect. *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

Adult child's complaint against her alleged father's estate to establish paternity under this section was barred by res judicata based on her mother's action brought under former § 34-702 in 1980, although the child did not seek child support, and the prior action was dismissed for the mother's failure to appear at a hearing. *Mathis v. Estate of McSpadden*, 2012 Ark. App. 599 (2012).

Presumptions.

Neither Lord Mansfield's Rule, which provides that the declarations of a father or mother cannot be admitted to illegitimize the issue born after marriage, nor the presumption of legitimacy of children born during the wedlock of two persons, apply where the child is born out of wedlock. *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987).

Presumption of legitimacy of a child conceived, but not born, during marriage, is rebuttable. *Willmon v. Hunter*, 297 Ark. 358, 761 S.W.2d 924 (1988).

Chancellor did not err in ordering a paternity test pursuant to this section, as public policy does not forbid the rebuttal of the presumption of legitimacy by paternity testing. *Golden v. Golden*, 57 Ark. App. 143, 942 S.W.2d 282 (1997).

Requirement that an action be filed and a condition satisfied within 180 days did not violate a purported beneficiary's federal constitutional equal protection rights or due process rights because she had no right to bring a paternity action on her own behalf since she was a person for whom paternity was presumed. The purported beneficiary was seeking to recover

as a pretermitted heir. *Bell v. McDonald*, 2014 Ark. 75, 432 S.W.3d 18 (2014).

Procedure.

Trial court erred in dismissing a paternity complaint on the basis of collateral estoppel or res judicata when the alleged biological father of the child was not a party, and was not in privy to a party, in an earlier divorce decree proclaiming the mother's husband to be the father of the child, and the matter of paternity had not been fully or fairly litigated in the earlier divorce action. *State Office of Child Support Enforcement v. Willis*, 347 Ark. 6, 59 S.W.3d 438 (2001).

Standing.

A child conceived and born of a marriage, and thus presumed to be the child of the marital partners, has no standing to bring a paternity action. *Hall v. Freeman*, 327 Ark. 148, 936 S.W.2d 761 (1997).

The presumption of legitimacy of a child born during marriage is the presumption to which reference is made in subdivision (3) of this section; the General Assembly has seen fit to preserve it as a bar to an action by a child born during a marriage. *Hall v. Freeman*, 327 Ark. 148, 936 S.W.2d 761 (1997).

Because the legislature was presumed to have known of prior Supreme Court decisions when it amended this section, a putative father had standing to bring an action to determine the paternity of a

child born to a woman married to another. *R.N. v. J.M.*, 347 Ark. 203, 61 S.W.3d 149 (2001).

Father who moved to annul a 1966 adoption, on grounds the father was fraudulently induced into believing the child was the father's biological child, was adjudicated to be the biological father in the adoption decree and did not fit within the statutorily-defined group of individuals upon whom standing was conferred to challenge paternity; thus, the trial court properly denied the father's request for paternity testing. *McAdams v. McAdams*, 353 Ark. 494, 109 S.W.3d 649 (2003).

Father's argument that custodian of the child did not have standing to bring a paternity action was irrelevant as the plaintiff listed in all the pleadings was the Office of Child Support Enforcement (OCSE), and the OCSE had the authority under this section to bring a paternity action. *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

Cited: *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983); *In re S.J.B.*, 294 Ark. 598, 745 S.W.2d 606 (1988); *Department of Human Servs. ex rel. Davis v. Seamster*, 36 Ark. App. 202, 820 S.W.2d 298 (1991); *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

9-10-105. Trial by court.

When the case is ready for trial, if the accused denies being the father of the child, the circuit court shall hear the evidence and decide the case.

History. Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 776; Pope's Dig., § 932; Acts 1955,

No. 374, § 2; A.S.A. 1947, § 34-705; Acts 2003, No. 1185, § 12.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

CASE NOTES

ANALYSIS

Child Support.
Jury Trial.

Child Support.

A putative father in a paternity case adjudged to pay less than the statutory minimum for the child's support was held not entitled to attack the validity of the paternity statute on the ground that it

does not provide for a jury to fix the amount paid. *Swaim v. State*, 184 Ark. 1107, 44 S.W.2d 1098 (1932).

Jury Trial.

Since a paternity proceeding was essentially an action at law for the recovery of money, the appellant was entitled to a jury trial on the issues of fact. *Waddell v. State*, 235 Ark. 293, 357 S.W.2d 651 (1962).

9-10-106. [Repealed.]

Publisher's Notes. This section, concerning paternity referees, was repealed by Acts 1993, No. 1242, § 2. The section

was derived from Acts 1983, No. 559, § 1; A.S.A. 1947, § 34-701.1.

9-10-107. [Repealed.]

Publisher's Notes. This section, concerning hearings for enforcement of support orders, was repealed by Acts 1995, No. 1064, § 2. The section was derived from Acts 1985, No. 988, § 4; 1986 (2nd

Ex. Sess.), No. 14, § 1; A.S.A. 1947, § 34-701.2; Acts 1993, No. 1242, § 3; 1995, No. 1184, §§ 1, 3. For current law, see § 9-14-204.

9-10-108. Paternity test.

(a)(1) Upon motion of either party in a paternity action, the trial court shall order that the putative father, mother, and child submit to scientific testing for paternity, which may include deoxyribonucleic acid testing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(2)(A) Upon motion of either party in a paternity action when the mother is deceased or unavailable, the trial court shall order that the putative father and child submit to scientific testing for paternity, which may include deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(B) If a maternal relative is available and willing to participate in paternity testing, the trial court shall include the maternal relative within its order for paternity testing.

(3)(A) Upon motion of either party in a paternity action when the father is deceased or unavailable, the trial court shall order that the mother and child submit to scientific testing for paternity, which may include deoxyribonucleic acid typing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

(B) If a paternal relative is available and willing to participate in paternity testing, the trial court shall include the paternal relative within its order for paternity testing.

(4) The tests shall be made by a duly qualified expert or experts to be appointed by the court.

(5)(A) A written report of the test results prepared by the duly qualified expert conducting the test or by a duly qualified expert under whose supervision or direction the test and analysis have been performed certified by an affidavit duly subscribed and sworn to by him or her before a notary public may be introduced into evidence in paternity actions without calling the expert as a witness unless a motion challenging the test procedures or results has been filed within thirty (30) days of the trial on the complaint and bond is posted in an amount sufficient to cover the costs of the duly qualified expert to appear and testify.

(B)(i) If contested, documentation of the chain of custody of samples taken from test subjects in paternity testing shall be verified by affidavit of one (1) person witnessing the procedure or extraction, packaging, and mailing of the samples and by one (1) person signing for the samples at the place where the samples are subject to the testing procedure.

(ii) Submission of the affidavits along with the submission of the test results shall be competent evidence to establish the chain of custody of these specimens.

(6)(A) If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child after corroborating testimony of the mother in regard to access during the probable period of conception, it shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut that proof.

(B) If the results of the paternity tests conducted pursuant to subdivision (a)(2) of this section establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, after corroborating testimony concerning the conception, birth, and history of the child, this shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut that proof.

(7) Whenever the court orders scientific testing for paternity and one (1) of the parties refuses to submit to the testing, that fact shall be disclosed upon the trial and may be considered civil contempt of court.

(8) The costs of the scientific testing for paternity and witness fees shall be taxed by the court as other costs in the case.

(9) Whenever it shall be relevant to the prosecution or the defense in a paternity action, scientific testing for paternity that excludes third parties as the biological father of the child may be introduced under the same requirements as set out in this section.

(b) The appearance of the name of the father with his consent on the certificate of birth, the Social Security account number of the alleged

father filed with his consent with the Division of Vital Records of the Department of Health pursuant to § 20-18-407, a certified copy of the certificate or records on which the name of the alleged father was entered with his consent from the vital records department of another state, or the registration of the father with his consent in the Putative Father Registry pursuant to § 20-18-702 shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut such in a proceeding for paternity establishment.

History. Acts 1955, No. 127, §§ 1-3; 705.1 — 34-705.3; Acts 1989, No. 725, § 2; 1981, No. 473, § 1; 1983, No. 437, § 1; 1991, No. 474, § 2; 1991, No. 986, § 1; 1985, No. 988, § 1; A.S.A. 1947, §§ 34-1995, No. 1178, § 1.

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CASE NOTES

ANALYSIS

Constitutionality.

In General.

Additional Tests.

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Trial court ruling that utilizing this section to allow blood tests in evidence only to exclude paternity was not a denial of equal protection and that blood tests would not be admitted to establish paternity was evidentiary and thus not an appealable order. *Story v. Hodges*, 272 Ark. 365, 614 S.W.2d 506 (1981).

In General.

The claim of child support enforcement against putative father was an original action to establish paternity, as opposed to an action to modify a paternity order under § 9-10-115, and the judge correctly found paternity pursuant to subdivision (a)(6)(B) of this section. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Statute granting trial courts authority to order a paternity test made an express

distinction between the type of testimony required when the mother was alive and when the mother was deceased; subdivision (a)(2)(A) of this section instructs that, upon motion of either party in a paternity action when the mother was deceased or unavailable, the trial court could order the putative father and child to submit to scientific testing for paternity. *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

Where the putative father and the child's mother had a brief romantic relationship, he did not know the mother was pregnant and did not see or talk to her after the encounter, and at the time an adoption petition was filed he had not registered with the putative-father registry, the putative father was not statutorily entitled to notice of the adoption proceeding. *Escobedo v. Nickita*, 365 Ark. 548, 231 S.W.3d 601 (2006).

Additional Tests.

Though subdivision (a)(5) of this section does not explicitly provide procedures for requesting additional court-ordered tests, the statute also does not exclude such a possibility; in light of the legislative intent that paternity of the children be established in the most expedient manner for all children of Arkansas, the circuit courts have wide discretion to take actions to resolve the question of paternity and may require a party requesting an additional paternity test to prove that the first test was defective before the court can compel a second paternity test. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

Section 9-10-103 applies to paternity tests ordered by the Office of Child Support Enforcement and not to tests ordered by the court; this section specifically deals with court-ordered paternity tests and, more importantly, while some language in § 9-10-103 incorporates the procedures of this section, there is no language in this section incorporating the protections of § 9-10-103. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

Admissibility.

The trial court erred in allowing into evidence two blood tests which did not exclude defendant as being the father, for the purpose of showing that he was the

father. *Winston v. Robinson*, 270 Ark. 996, 606 S.W.2d 757 (1980).

Fact of refusal to take blood test is admissible. *Cox v. Farrell*, 292 Ark. 177, 728 S.W.2d 954 (1987).

Blood tests inadmissible where person who verified test results did not perform them. This section requires that person performing blood test make verification thereon. *Tolhurst v. Reynolds*, 21 Ark. App. 94, 729 S.W.2d 25 (1987).

Where a paternity test was required to be notarized under subdivision (a)(5)(A) of this section, it was a self-authenticating document under Ark. R. Evid. 902(8) and plaintiff was not required to produce any extrinsic evidence of authenticity as a condition precedent to admissibility. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Appeals.

In a suit alleging paternity, an order for the defendant to report for paternity blood testing under this section is not final, and therefore not appealable under Ark. R. App. P. Civ. 2(a). *Helton v. Ark. Dep't of Human Servs.*, 309 Ark. 268, 828 S.W.2d 842 (1992).

Burden of Proof.

In a paternity proceeding brought against a living putative father, the mother's burden of proof is a mere preponderance of the evidence, as the proceeding is civil in nature. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992); *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992); *Erwin L.D. v. Myla Jean L.*, 41 Ark. App. 16, 847 S.W.2d 45 (1993).

A Roche blood-test report finding a 99.98% probability that defendant was the father of plaintiff's child, along with the corroborating testimony of plaintiff, constituted a prima facie case of establishment of paternity; defendant had the burden of rebutting this proof. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

If the results of the paternity tests conducted pursuant to subdivision (a)(2) of this section establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, and there is corroborating testimony concerning the conception, birth, and history of the child, a prima facie case of establishment of paternity is created, and the burden of proof shall shift

to the putative father to rebut such proof. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Certification.

Although subsection (a) of this section was amended to allow for certification by an expert under whose supervision or direction the test has been performed, the statements by the signatory of the report, that she was a director of the laboratory and that she had read the report, also fell short of meeting the foundational prerequisites for admission under the amended version. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

Chain of Custody.

Like a challenge of the test procedures or results pursuant to subdivision (a)(5)(A) of this section, subdivision (a)(5)(B)(i) of this section requires a contest on chain-of-custody grounds within 30 days of trial. *Parks v. Ewans*, 316 Ark. 91, 871 S.W.2d 343 (1994).

Circuit court did not err when it admitted the seven appellees' reports of DNA test results into evidence, after finding substantial compliance with subdivision (a)(5)(B) of this section, and held that decedent was appellees' biological father, rejecting the contention of decedent's estate that strict compliance with the statutory requirements concerning chain-of-custody affidavits was required. All of the DNA test results contained supporting documentation of the collection and receipt of the samples at the testing facility, the packages containing the DNA specimens were examined for integrity upon receipt at the lab, and there was no sign of tampering during transit; and the case did not involve any challenge to the authenticity of the DNA test results or any allegation of tampering. *Johnson v. Johnson*, 2020 Ark. App. 9, 593 S.W.3d 33 (2020).

Corroboration.

Since subdivision (a)(6)(A) of this section requires corroborating testimony of access from the mother, where mother's affidavit providing corroboration was not proffered, the statutory presumption never arose. *State v. Rogers*, 50 Ark. App. 108, 902 S.W.2d 243 (1995).

Cross-Examination.

The trial court was correct in ruling that laboratory report was not admissible,

since the persons who performed the blood tests at the laboratory were not available for cross-examination. *Chandler v. Baker*, 16 Ark. App. 253, 700 S.W.2d 378 (1985).

Evidence.

Although putative father attempted to rebut the evidence of paternity by offering the Affidavit of Birth Out of Wedlock and birth certificate as evidence that someone else was the father, his rebuttal failed, because under the law applicable when those documents were executed, they constituted presumptive evidence of paternity only, not conclusive evidence. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Expert Witnesses.

In a paternity action, no prejudicial error found in plaintiff's examination of expert witness who administered blood test. *Bradley v. Houston*, 12 Ark. App. 351, 676 S.W.2d 746 (1984).

Ark. R. Civ. P. 26(e), regarding supplementation of responses concerning expert witness, did not apply where court had ordered defendant and child to undergo blood tests. *Bradley v. Houston*, 12 Ark. App. 351, 676 S.W.2d 746 (1984).

Defendant failed to request expert witness's appearance within a reasonable time prior to trial where defendant made the request to cross-examine the expert who lived out-of-state only six business days before trial. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Foreign Judgment.

As the North Carolina courts would give res judicata effect to its finding of paternity in a divorce judgment in its courts, the Arkansas court was required to do likewise under the constitutional command of full faith and credit in denying the defendant's motion for blood testing. *Benac v. State*, 34 Ark. App. 238, 808 S.W.2d 797 (1991).

Defendant failed to request expert witness's appearance within a reasonable time prior to trial where defendant made the request to cross-examine the expert who lived out-of-state only six business days before trial. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Genetic Testing.

In light of the fact that recently developed genetic testing can, with a high de-

gree of certainty, identify the father of a child, and be viewed as conclusive by the fact-finder in paternity suits, strict adherence to the statutory foundational prerequisites is not unreasonable. *Ross v. Moore*, 30 Ark. App. 207, 785 S.W.2d 243 (1990).

Circuit court did not err in denying the request for an additional paternity test because the Office of Child Support Enforcement presented no evidence that the first paternity test was untrustworthy or defective; however, the circuit court did not expressly determine that a dismissal with prejudice was in the best interests of the child as, at the time of the trial, paternity had not been established for the child and the only effect of a dismissal with prejudice was to permanently exclude appellee from further paternity testing. *State Office of Child Support Enforcement v. Morgan*, 364 Ark. 358, 219 S.W.3d 175 (2005).

Identity of Test-Giver.

Although the chancery court has broad discretion in determining whether blood test reports should be admitted into evidence, chancellor abused his discretion by admitting report that contained nothing to indicate the identity of the person who performed the test or whether the person who performed the test was a duly qualified expert, and was signed by the laboratory director and scientific director respectively, but did not indicate that these two men performed the test or that they were qualified experts. *Boyles v. Clements*, 302 Ark. 575, 792 S.W.2d 311 (1990).

Blood test inadmissible where there was nothing in the report to indicate the identity of the person who performed the test or whether the person who performed the test was a duly qualified expert. *Ross v. Moore*, 30 Ark. App. 207, 785 S.W.2d 243 (1990).

Notice of Objection.

Putative father was not required to give 30 days' notice in order to object to admission of a blood test report; such notice is required only where the chain of custody, test procedures, or results are contested. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

Paternity of Deceased Child.

Father's petition to establish paternity to a deceased child through DNA testing pursuant to this section was properly dis-

missed under Ark. R. Civ. P. 12(b)(1) and (6) as there was no provision in the statute for establishing paternity when it was the child who was deceased. *Scoggins v. Medlock*, 2011 Ark. 194, 381 S.W.3d 781 (2011).

Right to Counsel.

Putative father's physical liberty was not in jeopardy at the initial hearing when he was ordered to submit to a paternity test; thus, he was not guaranteed the right to counsel in the paternity proceeding. *Burrell v. Ark. Dep't of Human Servs.*, 41 Ark. App. 140, 850 S.W.2d 8 (1993).

Sufficiency.

Evidence of blood tests was sufficient to establish that husband was not father of wife's child. *Richardson v. Richardson*, 252 Ark. 244, 478 S.W.2d 423 (1972).

Where the blood tests showed a 99.27% probability that the putative father was the father, he was living with the mother during the probable period of conception, and the mother stated she was not involved with anyone else at that time, this evidence gave her a statutory presumption of paternity. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

Blood test showing a 99.59% probability that defendant was the natural father, coupled with the mother's testimony regarding access during the probable period of conception, gave rise to a statutory presumption of paternity which was not rebutted by the father. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Where written blood test report did not comply with the foundational prerequisites set forth in subdivision (a)(5)(A), it could not be admitted into evidence. *Bain v. State*, 56 Ark. App. 7, 937 S.W.2d 670 (1997).

Cited: *George v. George*, 247 Ark. 17, 444 S.W.2d 62 (1969); *Dunn v. Davis*, 291 Ark. 492, 725 S.W.2d 853 (1987); *Laden v. Morgan*, 303 Ark. 585, 798 S.W.2d 678 (1990); *Roe v. State*, 304 Ark. 673, 804 S.W.2d 708 (1991); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996); *Blankenship v. Office of Child Support Enforcement*, 58 Ark. App. 260, 952 S.W.2d 173 (1997); *In re SCD*, 358 Ark. 51, 186 S.W.3d 225 (2004).

9-10-109. Child support following finding of paternity.

(a)(1)(A) Subsequent to the execution of an acknowledgment of paternity by the father and mother of a child pursuant to § 20-18-408 or § 20-18-409, or a similar acknowledgment executed during the child's minority, or subsequent to a finding by the court that the putative father in a paternity action is the father of the child, the court shall follow the same guidelines, procedures, and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit court as if it were a case involving a child born of a marriage in awarding custody, visitation, setting amounts of support, costs, and attorney's fees, and directing payments through the clerk of the court, or through the Arkansas Child Support Clearinghouse if the case was brought pursuant to Title IV-D of the Social Security Act 42 U.S.C. § 651 et seq.

(B) All child support payments paid by income withholding shall be subject to the provisions set forth in § 9-14-801 et seq.

(2) The court may provide for the payment of support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls prior to graduation from high school so long as such support is conditional on the child's remaining in school.

(3) The court may also provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent.

(b)(1)(A) All orders directing payments through the registry of the court or through the Arkansas Child Support Clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely satisfied.

(2) The clerk upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.

(3)(A) Payments made for this fee shall be made on an annual basis in the form of a check or money order payable to the clerk of the court or other such legal tender that the clerk may accept.

(B) This fee payment shall be separate and apart from the support payment, and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the

order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5)(A) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter.

(B)(i) Until all necessary data processing equipment has been acquired, at least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter.

(ii) The acquisition and update of software for the automated data system shall be a permitted use of these funds.

(C)(i) All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund".

(ii) Moneys deposited into this fund shall be appropriated and expended for the uses designated in this subdivision (b)(5) by the quorum court at the direction of the clerk of the court.

(c) The clerk of the court shall maintain accurate records of all support orders and payments under this section.

(d) The clerk may accept the support payment in any form of cash or commercial paper, including personal checks, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

History. Acts 1979, No. 71, § 1; 1985, No. 988, § 2; A.S.A. 1947, § 34-706.1; Acts 1987, No. 599, § 2; 1989 (3rd Ex. Sess.), No. 54, § 2; 1991, No. 1008, § 1; 1991, No. 1098, § 1; 1991, No. 1102, § 1; 1995, No. 1091, § 2; 1997, No. 208, § 6; 1997, No. 1296, §§ 5, 6; 1999, No. 1514, § 1.

A.C.R.C. Notes. Acts 1997, No. 208, § 1, as reenacted by Acts 2017, No. 255, § 1, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating

to individuals with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code of 1987 Annotated."

Publisher's Notes. Acts 1989 (3rd Ex. Sess.), No. 54, § 2, is also codified as § 9-12-312.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Seventeenth Annual Survey of Arkansas Law — Family Law, 17 U. Ark. Little Rock L.J. 557.

CASE NOTES

ANALYSIS

Construction.
Attorney's Fees.
Burden of Proof.

Custody.
Joint Custody.
Jurisdiction.
Modifications.
Public Policy.

Construction.

Subdivision (a)(1) of this section and § 9-10-113(a) are congruous; the finding of paternity and the establishment of visitation therein is a final determination from which to use the same standards as other custody situations. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Attorney's Fees.

Both subsection (a) of this section and § 9-27-342(d) provide a statutory basis for awarding attorney's fees in paternity actions. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

The plain language of subdivision (a)(1) of this section limits an award of attorney's fees to proceedings in which the court finds the putative father to be the father of the child. *Child Support Enforcement Unit v. Haller*, 50 Ark. App. 10, 899 S.W.2d 485 (1995).

Where there was no finding that party was the father of the child, subdivision (a)(1) of this section does not provide a statutory basis to award attorney's fees. *Child Support Enforcement Unit v. Haller*, 50 Ark. App. 10, 899 S.W.2d 485 (1995).

Trial court did not abuse its discretion in denying mother's motion for attorney's fees in a paternity action; the trial court considered the proper factors in deciding the mother's attorney's fee motion and she failed to show an abuse of discretion by the trial court. *Davis v. Williamson*, 359 Ark. 33, 194 S.W.3d 197 (2004).

Burden of Proof.

Fathers of illegitimate children should certainly bear the same burden as fathers of legitimate children born of marriage. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Custody.

Each parent has the right to request a change in custody; it is then that party's burden to show that there has been a change in circumstances since the original order establishing custody or that there were facts not presented at the initial hearing that would bear on the best interests of the child. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

It is not an unfair burden to require the biological father to prove a change of circumstances when the law presumes the child shall be in the custody of the mother

and the paternity order establishes visitation. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Joint Custody.

"Favored" status of joint custody specifically applies in divorce cases rather than custody cases involving children born to unmarried parents but this section expressly provides that, once paternity has been established, the court is ordered to follow "the same guidelines, procedures, and requirements ... as if it were a case involving a child born of a marriage in awarding custody [and] visitation." Accordingly, in a case concerning custody of a child born to unmarried parents, the circuit court did not err in recognizing that joint custody is "favored" under § 9-13-101. *Ryan v. White*, 2015 Ark. App. 494, 471 S.W.3d 243 (2015).

Once paternity is established, the presumption of awarding custody to the mother is erased, and the biological father is afforded the same right to establish a parental and custodial relationship with the child to which a married parent is entitled. *Ryan v. White*, 2015 Ark. App. 494, 471 S.W.3d 243 (2015).

Jurisdiction.

Where defendant was found to be father of child in paternity case and ordered to pay support and mother subsequently filed a petition under the Revised Uniform Enforcement of Support Act seeking modification of support order, petition was to be treated just as though it were a child support proceeding subsequent to a divorce, and in such a case, the chancery court that granted the divorce is the court that has continuing jurisdiction to modify the original allowance of child support. *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990).

Modifications.

This section authorizes modifications from time to time in the continuing order of support but it does not authorize a modification of a finding of paternity. *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982).

Public Policy.

Insofar as the agreement represented an attempt to permanently deprive the child of support, it was void as against public policy. *Paul M. v. Teresa M.*, 36 Ark. App. 116, 818 S.W.2d 594 (1991).

Cited: *Roe v. State*, 304 Ark. 673, 804 S.W.2d 708 (1991); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Rudolph v. Floyd*, 309 Ark. 514, 832 S.W.2d 219 (1992); *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994); *Doughty v. Douglas*, 2017 Ark. App. 445, 527 S.W.3d 732 (2017).

9-10-110. Judgment for lying-in expenses — Commitment on failure to pay.

(a) If it is found by the court that the accused is the father of the child, the court shall render judgment against him for the lying-in expenses in favor of the mother, person, or agency incurring the lying-in expenses, if claimed.

(b) If the lying-in expenses are not paid upon the rendition of the judgment, together with all costs that may be adjudged against him in the case, then the court shall have the power to commit the accused person to jail until the lying-in expenses are paid, with all costs.

(c)(1) Bills and invoices for pregnancy and childbirth expenses and paternity testing are admissible as evidence in the circuit court or juvenile division of circuit court without third-party foundation testimony if such bills or invoices are regular on their face.

(2) Such bills or invoices shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

History. Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 777; Acts 1927, No. 111, § 1; Pope's Dig., § 933; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, § 34-706; Acts 1997, No. 1296, § 7.

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Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

CASE NOTES

ANALYSIS

Constitutionality.

Purpose.

Counsel.

Determination of Liability.

Discretion of Court.

Proof.

Constitutionality.

This section does not discriminate on the basis of sex and does not violate the equal protection clause. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

Purpose.

The major purpose of Arkansas' filiation laws is to provide a process by which the putative father can be identified so that he may assume his equitable share of the responsibility to his child. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

Counsel.

While the statutes provide that the prosecuting attorney shall conduct the suit on behalf of the state on all appeals to the circuit court in cases of paternity, this does not mean that the mother of the child

cannot have an attorney to represent her nor does it mean that the suit must be dismissed if the prosecuting attorney does not appear in the case. *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953).

Determination of Liability.

Father has no vested right to have his liability determined by law as it existed when the child was born; this is not an ex post facto law. *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928).

Discretion of Court.

The trial court has discretion in assessing the amount of any awards made under this section. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

The court, in awarding lying-in expenses or attorney's fees under this section, may exercise its discretion in determining the amount that father should bear, and in doing so, it may even consider the mother's financial means when making an award. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

Proof.

A judgment awarding lying-in expenses and maintenance of the child would not be reversed because there was no proof as to the amount of the expenses. *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910).

Trial court did not err in denying some of the expenses included in mother's claim for lying-in expenses as this section includes expenses directly connected to the birth of a healthy infant and does not normally include items such as maternity clothes, lost wages, or counseling that are for the benefit of the mother; further, this

section allows expenses to be paid to the person incurring the expense and the trial court would have considered a claim for medical expenses paid by the prospective adoptive parents, however, the mother failed to provide proof that she incurred the medical expenses allegedly paid by the adoptive parents. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing counseling expenses where nothing in the record indicated that the counseling was for her baby. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing expenses for maternity clothes since no Arkansas cases considered maternity clothes as lying-in expenses. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court did not err in disallowing medical expenses that had been paid by prospective adoptive parents where the mother failed to adequately prove that she had incurred the expenses allegedly paid. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Trail court properly disallowed two medical bills for which a Medicaid claim was pending where the mother failed to show that the expenses had either been paid or incurred. *Taylor v. Finck*, 363 Ark. 183, 211 S.W.3d 532 (2005).

Cited: *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982); *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996).

9-10-111. Judgment for child support — Bond.

(a) If it is found by the circuit court that the accused is the father of the child and, if claimed by the mother, the circuit court or circuit judge shall give judgment for a monthly sum of not less than ten dollars (\$10.00) per month for every month from the birth of the child until the child attains eighteen (18) years of age.

(b)(1) The court shall further order that the father enter into bond to the State of Arkansas in the penal sum of five hundred dollars (\$500), with good and sufficient security.

(2) The bond shall be void if the person or his executors or administrators indemnify each county in this state from all costs and expenses for the maintenance or otherwise of the child while under eighteen (18)

years of age and for the payment of the monthly payments that may be adjudged as provided in subsection (a) of this section.

(3) Bonds shall be approved by the circuit judge and an entry made on the record of the conditions and the securities thereon.

(c) If the person refuses or neglects to enter into bond with security as provided in this section, the circuit judge shall commit him to the jail of the county, there to remain until he complies with the order or until he is otherwise discharged according to law.

History. Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., §§ 777, 778; Acts 1927, No. 111, § 1; Pope's Dig., §§ 933, 934; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, §§ 34-706, 34-707.

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Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

CASE NOTES

ANALYSIS

Counsel.
Determination of Liability.
Modification.
Noncompliance.
Police Power.
Retroactive Support.

Counsel.

While the statutes provide that the prosecuting attorney shall conduct the suit on behalf of the state on all appeals to the circuit court in cases of paternity, this does not mean that the mother of the child cannot have an attorney to represent her nor does it mean that the suit must be dismissed if the prosecuting attorney does not appear in the case. *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953).

Determination of Liability.

Father has no vested right to have his liability determined by law as it existed when the child was born; this is not an ex post facto law. *State ex rel. Woolems v. Davis*, 178 Ark. 692, 11 S.W.2d 479 (1928).

The trial court was not limited to amounts actually expended for past support. *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992).

Modification.

A general reservation of jurisdiction, in the absence of fraud or another ground listed under Ark. R. Civ. P. 60(c), will permit modification of a decree after 90 days only with respect to issues that were before the court in the original action. *Beavers v. Vaughn*, 41 Ark. App. 96, 849 S.W.2d 6 (1993).

Noncompliance.

Commitment of the putative father of an illegitimate child to jail indefinitely for failure to pay sums to the prosecuting witness and to furnish bond was held erroneous where the evidence disclosed that it was impossible for him to comply with the order of the county court. *Hemby v. State*, 188 Ark. 586, 67 S.W.2d 182 (1934).

Police Power.

Imprisonment under this statute is an exercise of police powers and not for debt. *Land v. State*, 84 Ark. 199, 105 S.W. 90 (1907).

Retroactive Support.

Circuit court erred in declining to award retroactive child support where the basis for its decision, i.e., that the father had not been able to have visitation with

the child since birth, was in violation of subsection (a) of this rule; in addition, Arkansas caselaw is clear that a parent's child-support obligation does not depend on the parent's relationship or visitation with the child. *Walden v. Jackson*, 2016 Ark. App. 573, 506 S.W.3d 904 (2016).

Trial court clearly erred in failing to award the mother child-support arrearages for the period between the date when the father stopped providing voluntary support for the child to the date the father filed his petition to establish paternity as the father had never disputed his paternity and had paid child support or shared expenses previously. *Henderson v. Johnston*, 2017 Ark. App. 620, 534 S.W.3d 196 (2017).

Trial court clearly erred in abating the father's child-support obligation for the period the mother and child were living in another country as the obligation for child support did not depend on the father's relationship or visitation with the child.

Henderson v. Johnston, 2017 Ark. App. 620, 534 S.W.3d 196 (2017).

Circuit court abused its discretion by determining not to award any amount of retroactive support because an award of retroactive child support from the date of the child's birth is statutorily required. Furthermore, while the creation of a trust or educational savings account is a deviation factor under the Arkansas Child Support Guidelines, the court cannot order the creation of such accounts in lieu of an award of retroactive support. *Szwedo v. Cyrus*, 2019 Ark. App. 23, 570 S.W.3d 484 (2019).

Cited: *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982); *Watt v. Office of Child Support Enforcement*, 364 Ark. 236, 217 S.W.3d 785 (2005).

9-10-112. Income withholding — Delinquent noncustodial parent.

(a)(1) Except as provided in subsection (b) of this section, all persons under court order on August 1, 1985, to pay support who become delinquent thereunder in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to income withholding.

(2)(A) In all orders that provide for the payment of money for the support of any child, the circuit court shall include a provision directing a payor to deduct from money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to meet the periodic child support payments imposed by the court, plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order.

(B) The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies.

(b)(1) Beginning October 1, 1989, in all cases brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., the support orders issued or modified shall include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. Otherwise, it shall become effective under subsection (a) of this section following the procedure set forth in

subsection (c) of this section, or as provided in subsection (d) of this section.

(2) Beginning January 1, 1994, all support orders issued or modified shall include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement.

(3) In all non-Title IV-D cases brought prior to January 1, 1994, the support order may include a provision for immediate implementation of income withholding, absent a finding of good cause not to require immediate withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. The judge of each division shall determine if all support orders shall be subject to the provisions of this section and shall enter a standing order setting forth the treatment of non-Title IV-D cases in that division prior to January 1, 1994.

(c) In activating an order of income withholding that did not become effective immediately, the court shall follow the same procedures and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit court.

(d) In cases brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., with support orders effective prior to October 1, 1989, income withholding may take effect immediately in any child support case at the request or upon the consent of the noncustodial parent.

History. Acts 1983, No. 592, § 1; 1985, No. 988, § 3; A.S.A. 1947, § 34-706.2; Acts 1989, No. 948, § 1; 1991, No. 1095, § 1; 1993, No. 396, § 3; 2003, No. 1020, § 1.

Cross References. Jurisdiction of circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

CASE NOTES

Cited: Cochran v. Cochran, 309 Ark. 604, 832 S.W.2d 252 (1992); Ark. Dep't of Human Servs. v. Hardy, 316 Ark. 119, 871 S.W.2d 352 (1994).

9-10-113. Custody of child born outside of marriage.

(a) When a child is born to an unmarried woman, legal custody of that child shall be in the woman giving birth to the child until the child

reaches eighteen (18) years of age unless a court of competent jurisdiction enters an order placing the child in the custody of another party.

(b) A biological father, provided he has established paternity in a court of competent jurisdiction, may petition the circuit court in the county where the child resides for custody of the child.

(c) The court may award custody to the biological father upon a showing that:

(1) He is a fit parent to raise the child;

(2) He has assumed his responsibilities toward the child by providing care, supervision, protection, and financial support for the child; and

(3) It is in the best interest of the child to award custody to the biological father.

(d) When in the best interest of a child, visitation shall be awarded in a way that assures the frequent and continuing contact of the child with the mother and the biological father.

History. Acts 1981, No. 665, § 1; A.S.A. 1947, § 34-718; Acts 1987, No. 488, § 1; 1987, No. 667, § 1; 2003, No. 1185, § 13; 2007, No. 654, § 1.

Publisher's Notes. Acts 1981, No. 665, § 2, stated the General Assembly's finding and determination that, prior to June 17, 1981, parents of illegitimate children were not being accorded equal protection

of the law and that the United States Supreme Court had determined that both parents of an illegitimate child have a right to establish a parental and custodial relationship with the child.

Cross References. Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

Arkansas Law Survey, Price, Civil Procedure, 9 U. Ark. Little Rock L.J. 91.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

Seventeenth Annual Survey of Arkansas Law — Family Law, 17 U. Ark. Little Rock L.J. 557.

CASE NOTES

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In General.

Under this section, a biological father may petition for custody, provided that he

has established paternity. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Trial court did not procedurally err in considering the mother's evidence of her fitness to have custody of the child where although the mother had not filed an affirmative pleading in response to the biological father's temporary custody action, custody of the child was with the mother under this section, and thus, permanent custody was the issue to be decided at the final hearing. *Deaton v. Morgan*, 2014 Ark. App. 521, 443 S.W.3d 580 (2014).

Trial court did not clearly err in granting custody of the child to the mother where the testimony concerning the moth-

er's living situation, her employment, and her attentiveness to the child did not leave the appellate court with a definite and firm conviction that a mistake had been made. *Deaton v. Morgan*, 2014 Ark. App. 521, 443 S.W.3d 580 (2014).

Construction.

Section 9-10-109(a)(1) and subsection (a) of this section are congruous; the finding of paternity and the establishment of visitation therein is a final determination from which to use the same standards as other custody situations. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Best Interest of Child.

Trial court did not err in awarding custody of the parties' child to the mother. There was evidence that the mother had been the primary caregiver during the child's life and was able to provide a suitable home with help from family members to care for the child. *Smith v. Hudgins*, 2014 Ark. App. 150, 433 S.W.3d 265 (2014).

Burden of Proof.

Each parent has the right to request a change in custody; it is then that party's burden to show that there has been a change in circumstances since the original order establishing custody or that there were facts not presented at the initial hearing that would bear on the best interests of the child. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Fathers of illegitimate children should certainly bear the same burden as fathers of legitimate children born of marriage. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Change in Circumstances.

It is not an unfair burden to require the biological father to prove a change of circumstances when the law presumes the child shall be in the custody of the mother and the paternity order establishes visitation. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

The chancellor did not err by charging father with showing a change of circumstances since the last custody order, which the chancellor deemed the initial determination of paternity, and adding this to the three requirements listed in subsection (c) of this section, since a "material change of

circumstances" is required in other change of custody cases. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Where a child was born outside of marriage and the father petitioned for a change of custody so that he could gain custody, although the appellate court had doubts about the father's alleged drug use, the circuit court, after weighing the evidence, properly decided that evidence existed to support a finding of changed circumstances, and determined that awarding custody of the child to the father was in the child's best interests. *Cranston v. Carroll*, 97 Ark. App. 23, 242 S.W.3d 643 (2006).

Order awarding custody of an illegitimate child to the child's father was upheld where the trial court did not err in not requiring the father to prove a material change of circumstances prior to the entry of the custody order; although an original visitation order did not set a future date for a custody hearing, the order was temporary in nature because it did not resolve the issue of custody. *Harmon v. Wells*, 98 Ark. App. 355, 255 S.W.3d 501 (2007).

In a petition for protection, paternity, and custody, a father, before being awarded custody of his minor daughter, was not required to show a material change of circumstances under this section because no order had been entered regarding custody until the father filed his petition. *Donato v. Walker*, 2010 Ark. App. 566, 377 S.W.3d 437 (2010).

Trial court erred in requiring a biological father to prove a material change of circumstances in order to obtain custody of his two children because it was an initial custody determination with the paternity action, not a change of custody action. *Lane v. Blevins*, 2013 Ark. App. 270 (2013).

In a custody case involving a child born to unmarried parents, a father was not required to establish a material change of circumstances; because the father filed his petition for custody before paternity was established, and a subsequent June 11, 2013, order was temporary in nature, the father only had to meet the three requirements in this section to be awarded custody. Moreover, the mother initially exhibited a lack of regard for the father's opportunity and time to be with the child, an award of joint custody was in the best

interest of the child, and both parties were appropriate for the placement of the child in their care and custody. *Ryan v. White*, 2015 Ark. App. 494, 471 S.W.3d 243 (2015).

Father of an out-of-wedlock child was required to plead and establish a material change of circumstances where a paragraph in the initial paternity judgment stated that the mother had custody until a subsequent order placed the child in the custody of another person or the child turned 18, whichever was later, that paragraph was an enforceable judicial determination that clearly established custodial rights even though it was silent as to the father's visitation rights, and nothing in the order indicated that it was temporary. *Rivers v. DeBoer*, 2019 Ark. App. 132, 572 S.W.3d 887 (2019).

Custody to Father.

Circuit court was in the best position to judge the witnesses' credibility in what was essentially a swearing match about who would be the better custodial parent, and the appellate court deferred to the circuit court's decision granting custody of the parties' daughter born out of wedlock to the father. The circuit court's rulings banning alcohol, drugs, and cohabitation by unwed or non-blood relatives adequately addressed any other issues about the father's custody being in his daughter's best interest. *Medina v. Roberts*, 2010 Ark. App. 165 (2010).

In a petition for protection, paternity, and custody, the trial court properly awarded custody of the parties' minor daughter to the father because the evidence showed that the mother's temper scared her daughter, that the mother attempted to commit suicide, and that the father was an exceptional parent. *Donato v. Walker*, 2010 Ark. App. 566, 377 S.W.3d 437 (2010).

Order granting custody of the parties' child to the father following a finding of paternity was proper because the circuit court's finding that it was in the child's best interest to be in the custody of the father was not clearly erroneous. Although the circuit court recognized the mother's homosexual relationship, it was her "lifestyle choices" that resulted in the decision to award custody to the father, including the fact that she was not employed and was not progressing academi-

cally in college and yet she left the child in daycare. *Brimberry v. Gordon*, 2013 Ark. App. 473 (2013).

Trial court properly awarded custody to a father because he established his paternity, had provided housing and support for the child since her birth, and the mother failed to preserve her arguments regarding any "material change in circumstances." *Abo v. Walker*, 2014 Ark. App. 500 (2014).

There was no clear error in the circuit court's determination under subdivision (c)(3) of this section that a father's life was more stable because he had the same job as a firefighter for several years, and he had lived consistently in his father's house, where there was a dedicated bedroom for the child; the father lived in the same overall vicinity as many members of his own family and within a relatively short distance from the mother's extended family. *Pelayo v. Sims*, 2020 Ark. App. 258, 600 S.W.3d 114 (2020).

Circuit court did not make a mistake in concluding subdivisions (c)(1) and (2) of this section were satisfied because a father did eventually provide some financial support, care, supervision, and protection for his child on a regular basis, and the evidence supported the conclusion that he provided appropriate care, supervision, and protection for the child when the child was in his care; the evidence before the circuit court supported a fitness finding. *Pelayo v. Sims*, 2020 Ark. App. 258, 600 S.W.3d 114 (2020).

Custody to Third Party.

An award of custody of a child to the child's grandmother, with liberal visitation to the father was appropriate, where (1) the biological mother surrendered custody to the grandmother, (2) the father never voluntarily established his paternity and failed to assume his responsibilities toward the child for over 3 years, (3) the father recognized the difficulties he and his wife would face if there was an immediate removal of the child from the only home she had known, and (4) the grandmother also had custody of a half-sister of the child. *Freshour v. West*, 334 Ark. 100, 971 S.W.2d 263 (1998).

Joint Custody.

"Favored" status of joint custody specifically applies in divorce cases rather than

custody cases involving children born to unmarried parents but § 9-10-109 expressly provides that, once paternity has been established, the court is ordered to follow “the same guidelines, procedures, and requirements ... as if it were a case involving a child born of a marriage in awarding custody [and] visitation.” Accordingly, in a case concerning custody of a child born to unmarried parents, the circuit court did not err in recognizing that joint custody is “favored” under § 9-13-101. *Ryan v. White*, 2015 Ark. App. 494, 471 S.W.3d 243 (2015).

In awarding a biological father joint custody and increased visitation time with a child born out of wedlock, the circuit court did not improperly predicate its child custody ruling on § 9-13-101(a)(1) where it simply acknowledged the favored status joint custody received under that statute. *Gibson v. Keener*, 2016 Ark. App. 363, 498 S.W.3d 760 (2016).

Circuit court did not err in finding a material change in circumstances to warrant a change of custody where the evidence showed that the father’s relationship with the child had blossomed into a parent-child relationship that had not yet begun at the time of the last custody order, and although there was conflicting testimony on the father’s alcohol use and how much involvement he had with the child’s care, the evidence supported the circuit court’s conclusion that the mother and father were reasonable parents capable of co-parenting. *Gibson v. Keener*, 2016 Ark. App. 363, 498 S.W.3d 760 (2016).

Parental Fitness.

The chancellor was clearly justified in denying father’s motion to change custody where the clear evidence established that he had not assumed the responsibilities specified in subdivision (c)(2) of this section, even if he was deemed a fit parent in other respects. *State Office of Child Support Enforcement v. Mitchell*, 61 Ark. App. 54, 964 S.W.2d 218 (1998).

Court properly awarded custody of child to the father where paternity was established, the father paid child support and was a fit parent, the mother was unemployed, and she failed to aid the facilitation of a relationship between the father and the child. *Sheppard v. Speir*, 85 Ark. App. 481, 157 S.W.3d 583 (2004).

Court erred by awarding child custody to a father because the mother lived within her means, was receiving child support, was receiving legitimate governmental aid, and managed to run an independent household where she could be a full-time parent. Although the father had held down a full-time job for several years, had his family to support his parenting, and had taken responsibility for the child, he lived with his parents, he had a sister who could not be left alone with the child due to drug-abuse concerns, and he had no experience in raising a child. *Sykes v. Warren*, 99 Ark. App. 210, 258 S.W.3d 788 (2007).

Trial court properly awarded custody of a child to his biological father, pursuant to subsection (a) of this section, where the father had a clean, stable, loving environment for the child; the child suffered from a dog bite wound and had dirty hygiene while in the care of his mother, whose religious beliefs and mental health were factors in the trial court’s assessment of the child’s best interests. *Hicks v. Cook*, 103 Ark. App. 207, 288 S.W.3d 244 (2008).

Presumption of Custody.

Before 1987, no provisions for presumption of custody were in this section, and either parent of an illegitimate child could petition for custody under the same three criteria; however, in 1987, the legislature changed this section by adding a presumption of custody in the mother and leaving the father with the right to seek custody after establishing paternity. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

The order establishing paternity gave the statutory presumption the effect of judicial determination. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Implicit in an order of paternity establishing visitation is a determination that custody should continue to rest in the mother. *Norwood v. Robinson*, 315 Ark. 255, 866 S.W.2d 398 (1993).

Relation to Divorce Cases.

In a divorce case, a wife’s argument under this section relating to children that were born out of wedlock was rejected because this section is part of the Paternity Code, and its applicability did not extend to divorce decrees; moreover, the husband alleged that he was the father of

the children born out of wedlock in his divorce complaint, the allegation was uncontested by the wife, and the divorce decree stated that the husband was the father. *Villanueva v. Valdivia*, 2016 Ark. App. 107, 483 S.W.3d 308 (2016).

Venue.

The fact that the legislature provided for venue in two counties in § 9-10-104 (rewritten by 1989 amendment), which governs suits brought by a father to determine paternity, but only one county in this section, demonstrates that this section was intended to limit venue in custody actions to the county wherein the child resides. *Fuller v. Robinson*, 279 Ark. 252, 650 S.W.2d 585 (1983).

Mother properly raised a venue argument in her first responsive pleading; however, the issue was without merit because the provisions of this section were inapplicable in a case where a minor child no longer resided in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

Cited: *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Jarmon v. Brown*, 286 Ark. 455, 692 S.W.2d 618 (1985); *Hooks v. Pratte*, 53 Ark. App. 161, 920 S.W.2d 24 (1996); *Leach v. Leach*, 57 Ark. App. 155, 942 S.W.2d 286 (1997); *Gilbert v. Moore*, 364 Ark. 127, 216 S.W.3d 583 (2005).

9-10-114. Visitation rights of father.

When any circuit court in this state determines the paternity of a child and orders the father to make periodic payments for support of the child, the court may also grant reasonable visitation rights to the father and may issue such orders as may be necessary to enforce the visitation rights.

History. Acts 1979, No. 621, § 1; A.S.A. 1947, § 34-715.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

CASE NOTES

Contempt Power.

A chancery court has the power to use its contempt power to enforce its order awarding visitation to a stepparent in the context of a divorce decree. *Young v.*

Smith, 331 Ark. 525, 964 S.W.2d 784 (1998).

Cited: *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981).

9-10-115. Modification of orders or judgments.

(a) The circuit court may at any time enlarge, diminish, or vacate any order or judgment in the proceedings under this section except in regard to the issue of paternity as justice may require and on such notice to the defendant as the court may prescribe.

(b) The court shall not set aside, alter, or modify any final decree, order, or judgment of paternity in which paternity blood testing, genetic testing, or other scientific evidence was used to determine the adjudicated father as the biological father.

(c) Any signatory to a voluntary acknowledgment of paternity may rescind the acknowledgment by completing a form provided for that purpose and filing the form with the Division of Vital Records of the Department of Health:

(1) Prior to the date that an administrative or judicial proceeding, including a proceeding to establish a support order, is held relating to the child and the person executing the voluntary acknowledgment of paternity is a party; or

(2) Within sixty (60) days of executing the voluntary acknowledgment of paternity, whichever date occurs first.

(d)(1) Beyond the sixty-day period or other limitation set forth in subsection (c) of this section, a person may challenge a paternity establishment pursuant to a voluntary acknowledgment of paternity or an order based on an acknowledgment of paternity only upon an allegation of fraud, duress, or material mistake of fact.

(2) The burden of proof shall be upon the person challenging the establishment of paternity.

(e)(1)(A) When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.

(B) If an acknowledgment of paternity was the basis for the order of support, the motion must comply with the requirements of subsection (d) of this section.

(2) The duty to pay child support and other legal obligations shall not be suspended while the motion is pending except for good cause shown, which shall be recited in the court's order.

(f)(1) If the test administered under subdivision (e)(1)(A) of this section excludes the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity as the biological father of the child and the court so finds, the court shall:

(A) Set aside the previous finding or establishment of paternity;

(B) Find that there is no future obligation of support;

(C) Order that any unpaid support owed under the previous order is vacated; and

(D) Order that any support previously paid is not subject to refund.

(2) If the name of the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity appears on the birth certificate of the child, the court shall issue an order requiring the birth certificate to be amended to delete the name of the father.

(g) If the test administered under subdivision (e)(1)(A) of this section confirms that the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity is the biological father of

the child, the court shall enter an order adjudicating paternity and setting child support in accordance with § 9-10-109, the guidelines for child support, and the family support chart.

History. Acts 1875 (Adj. Sess.), No. 24, § 5, p. 25; 1879, No. 72, § 3, p. 95; C. & M. Dig., § 777; Acts 1927, No. 111, § 1; Pope's Dig., § 933; Acts 1955, No. 236, § 1; 1979, No. 718, § 1; 1983, No. 177, § 1; A.S.A. 1947, § 34-706; Acts 1993, No. 1242, § 8; 1995, No. 1091, § 3; 1997, No. 1296, § 8; 1999, No. 1514, § 2; 2001, No. 1736, § 1; 2007, No. 60, § 1.

A.C.R.C. Notes. As originally enacted, subsection (a) provided: "The chancery court may at any time" Amendment 80 to the Arkansas Constitution was adopted by voter referendum and became effective July 1, 2001. Amendment 80 established circuit courts as the trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to the Con-

stitution and specifically provided that "jurisdiction conferred on Circuit Courts established by this Amendment includes all matters previously cognizable by Circuit, Chancery, Probate and Juvenile Courts"

Acts 2007, No. 60, § 1, in amending § 9-10-115(f)(1) deleted the language "relieve him of any future obligation of support as of the date of the finding" without markup. Upon review of the language of the bill as introduced and the language of the amendment to the bill, it was determined that it was the intent of the amendment to replace the missing language with the language that is now subdivision (f)(1)(B). Therefore, the missing language is repealed.

RESEARCH REFERENCES

Ark. L. Rev. Case Note, Child Support Supported: Policy Trumps Equity in *Martin v. Pierce* Despite Fraud and a Controversial Amendment to the Paternity Code, 61 Ark. L. Rev. 571.

Rachel A. Orr, Recent Developments: Putative Father Entitled to Paternity Test Only During the Period of Time That He Is Required to Pay Child Support, 65 Ark. L. Rev. 517 (2012).

Brittany Horn, Case Note: Who's Your Daddy? *State v. Perry* and Its Impact on Paternity and the Rights of Adjudicated Fathers in Arkansas, 66 Ark. L. Rev. 1059 (2013).

U. Ark. Little Rock L.J. Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

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Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

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Purpose.

The major purpose of Arkansas' filiation laws is to provide a process by which the putative father can be identified so that he may assume his equitable share of the responsibility to his child. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

Previously adjudicated or acknowledged father could not be relieved of past-due child support as this statute only refers to relief from any future obligation of support and the duty to pay child sup-

port and other legal obligations is not suspended while a motion challenging the adjudication of paternity is pending; the legislature did not intend for a previously adjudicated or acknowledged father to be relieved of past-due child support upon a finding that he was actually not the legal father. *State Office of Child Support Enforcement v. Parker*, 368 Ark. 393, 246 S.W.3d 851 (2007).

Applicability.

Because this section should not be applied retroactively, the voluntary acknowledgment of paternity was not conclusive by operation of law under the law as it existed in 1990, and paternity was not established that would trigger the running of the statute of limitations of the former law. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Although this section had been amended, it did not overrule an appellate court decision concluding that the statute did not apply when paternity became an issue after a divorce decree had been entered. *Martin v. Pierce*, 370 Ark. 53, 257 S.W.3d 82 (2007).

Order holding that appellee was not the biological father of a child, setting aside an order of paternity, setting aside orders for child support, and vacating the outstanding amounts of child support was proper because the trial court applied the version of this section in effect at the time the written order was filed. *Wesley v. Hall*, 104 Ark. App. 50, 289 S.W.3d 143 (2008).

Authority to Modify.

A judgment may be modified only by the court which ordered it and not by any other court, especially not by a court of inferior jurisdiction. *Rose v. Mahan*, 29 Ark. App. 93, 777 S.W.2d 864 (1989).

The chancery court did not have the authority to grant a putative father's motion for a paternity test, and later to set aside the paternity judgment, twelve years after the original adjudication of his paternity was entered upon his failure to comply with the testing requirements. *Flemings v. Littles*, 325 Ark. 367, 926 S.W.2d 445 (1996).

Discretion of Court.

The trial court has discretion in assessing the amount of any awards made under this section. The court, in awarding ly-

ing-in expenses or attorney's fees under this section, may exercise its discretion in determining the amount that father should bear, and in doing so, it may even consider the mother's financial means when making an award. *Eaves v. Dover*, 291 Ark. 545, 726 S.W.2d 276 (1987).

The claim of child support enforcement against putative father was an original action to establish paternity, as opposed to an action to modify a paternity order under this section, and the judge correctly found paternity pursuant to § 9-10-108(a)(6)(B). *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Effect of Amendments.

If Acts 1995, No. 1091 were applied to any type of "acknowledgment of paternity" signed before the act's effective date, a new obligation would be created and the man signing the form, by operation of law, would become the father conclusively, when before Acts 1995, No. 1091 was passed, such evidence could only be used as persuasive, presumptive evidence of paternity. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Jurisdiction.

Default judgment in a child support case should have been set aside because service was unquestionably defective where it was effectuated upon a purported father's brother; therefore, a circuit court abused its discretion when it took any action other than a dismissal of the case under Ark. R. Civ. P. 4(i). The father's subsequent participation in enforcement proceedings, including his act of filing for paternity testing, did not validate the void judgment. *Foury v. Office of Child Support Enforcement*, 99 Ark. App. 341, 260 S.W.3d 328 (2007).

Legislative Intent.

All legislation is intended to act prospectively unless the purpose and intent of the legislature is to give the statutes retroactive effect which is expressly declared or necessarily implied from the language used. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Modification Denied.

A petition for modification will be denied where the change in financial condi-

tion is due to the fault, voluntary wastage, or dissipation of one's talents or assets, or where the means with which to pay were reduced or eliminated by criminal activity. *Reid v. Reid*, 57 Ark. App. 289, 944 S.W.2d 559 (1997).

Motion to Transfer.

Trial court erred in granting mother's motion to transfer a custody action because there was evidence that the father never established a residence outside of the first county, as contemplated by § 9-10-102(f)(1)(B)(i); thus, on father's motion to vacate, the trial court should have vacated the transfer under subsection (a) of this section rather than grant father a directed verdict under Ark. R. Civ. P. 60(a). *Stephens v. Miller*, 91 Ark. App. 253, 209 S.W.3d 452 (2005).

Paternity Testing.

Where a default judgment was entered in paternity proceedings and the adjudicated father's support obligation was established in 1995, the Office of Child Support Enforcement instituted proceedings in 2005 to recover support arrearages, and the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the father's motion was untimely. Subdivision (e)(1)(A) of this section allows an adjudicated father one paternity test during any time period in which he is required to pay child support and the father's child support obligation terminated under § 9-14-237 when the child reached the age of majority. *State v. Perry*, 2012 Ark. 106 (2012).

Period of time that the father was required to pay child support ended under § 9-14-237 when the child turned 18; likewise, the period of time in which the father could seek a paternity test also ended when the child turned 18. *State v. Perry*, 2012 Ark. 106 (2012).

Retroactive Modification.

Since this section plainly directs the court to relieve the alleged father of only future obligation of support, an adjudicated

father, later determined not to be the biological father, was not entitled to a refund of the support paid. *State v. Philippe*, 323 Ark. 434, 914 S.W.2d 752 (1996).

An adjudicated father who was shown by scientific evidence not to be the biological father of the child in question was not entitled to relief from back child support under the statute since there was no evidence or contention that he ever had physical custody of the child, as required by § 9-14-234. *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998).

Order that an alleged father was not obligated to pay the unpaid balance of his support obligation from the date of the order forward pursuant to subdivision (f)(1)(C) of this section was affirmed because the circuit court correctly applied the amended version of this section and found that the alleged father's obligation had to be vacated. *State v. Jones*, 2009 Ark. 620 (2009).

Termination.

The changes in circumstances which gave rise to a previous modification of support cannot be used again as the basis for termination of support. *Benn v. Benn*, 57 Ark. App. 190, 944 S.W.2d 555 (1997).

Where scientific evidence proves that an adjudicated father is not, in fact, the biological father of the child in question, the statute mandates prospective relief from child support. *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998).

A paternity adjudication in a divorce decree is not affected by subsequent scientific testing which negates paternity. *State Office of Child Support Enforcement v. Williams*, 338 Ark. 347, 995 S.W.2d 338 (1999).

Cited: *Belford v. State*, 96 Ark. 274, 131 S.W. 953 (1910); *Epperson v. Sharp*, 222 Ark. 456, 261 S.W.2d 267 (1953); *Dozier v. Veasley*, 272 Ark. 210, 613 S.W.2d 93 (1981); *Roque v. Frederick*, 272 Ark. 392, 614 S.W.2d 667 (1981); *Wilkins v. Ford*, 275 Ark. 469, 631 S.W.2d 298 (1982).

9-10-116. [Repealed.]

Publisher's Notes. This section, concerning chancellor's fees, was repealed by Acts 2003, No. 1185, § 14. The section

was derived from Acts 1879, No. 72, § 4, p. 95; C. & M. Dig., § 785; Pope's Dig., § 941; A.S.A. 1947, § 34-714.

9-10-117. [Repealed.]

A.C.R.C. Notes. Former § 9-10-117, concerning appeal to circuit court, is deemed to be superseded by this section. The former section was derived from Acts 1875 (Adj. Sess.), No. 24, § 7, p. 25; C. & M. Dig., § 780; Pope's Dig., § 936; A.S.A.

1947, § 34-709.

Publisher's Notes. This section, concerning appeals, was repealed by Acts 2003, No. 1185, § 15. The section was derived from Acts 1989, No. 725, § 5.

9-10-118. [Superseded.]

A.C.R.C. Notes. This section, concerning trial de novo on appeal, is deemed to be superseded by § 9-10-117 [repealed]. This section was derived from Acts 1875

(Adj. Sess.), No. 24, § 9, p. 25; C. & M. Dig., § 782; Pope's Dig., § 938; A.S.A. 1947, § 34-711.

9-10-119. Revival of judgment.

The judgment may be revived against the executor or administrator of the person against whom the judgment was rendered.

History. Acts 1875 (Adj. Sess.), No. 24, § 6, p. 25; C. & M. Dig., § 779; Pope's Dig., § 935; A.S.A. 1947, § 34-708.

9-10-120. Effect of acknowledgment of paternity.

(a) A man is the father of a child for all intents and purposes if he and the mother execute an acknowledgment of paternity of the child pursuant to § 20-18-408 or § 20-18-409, or a similar acknowledgment executed during the child's minority.

(b)(1) Acknowledgments of paternity shall by operation of law constitute a conclusive finding of paternity, subject to the modification of orders or judgments under § 9-10-115, and shall be recognized by the circuit courts and juvenile divisions thereof as creating a parent and child relationship between father and child.

(2) Such acknowledgments of paternity shall also be recognized as forming the basis for establishment and enforcement of a child support or visitation order without a further proceeding to establish paternity.

(c) The Department of Health shall offer voluntary paternity establishment services in all of its offices throughout the state. The Department of Health shall coordinate such services with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(d) Upon submission of the acknowledgment of paternity to the Division of Vital Records, the State Registrar of Vital Records shall accordingly establish a new or amended certificate of birth reflecting the name of the father as recited in the acknowledgment of paternity.

(e) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and the hospital, birthing center, certified nurse practitioner, or licensed midwife delivering the child shall enter into cooperative agree-

ments to compensate at a rate not to exceed twenty dollars (\$20.00) for each acknowledgment of paternity forwarded by the hospital, birthing center, certified nurse practitioner, or licensed midwife to the office.

History. Acts 1995, No. 1091, § 1; 1997, No. 1296, § 9.

RESEARCH REFERENCES

Ark. L. Rev. Lacey Johnson, Comment: Biology Plus Test for Paternal Rights, 70 *Ark. L. Rev.* 1113 (2018).

CASE NOTES

ANALYSIS

Effect of Amendments.

Time of Execution.

Effect of Amendments.

If Acts 1995, No. 1091 were applied to any type of “acknowledgment of paternity” signed before the act’s effective date, a new obligation would be created and the person signing the form, by operation of law, would become the father conclusively, when before Acts 1995, No. 1091 was passed, such evidence could only be used as persuasive, presumptive evidence of

paternity. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Time of Execution.

Although §§ 20-18-408 and 20-18-409 were not in effect in 1990 when the “Affidavit of Birth Out of Wedlock” was signed, this section also allows a “similar acknowledgment” to suffice if it is executed during the child’s minority. *Bean v. Office of Child Support Enforcement*, 340 Ark. 286, 9 S.W.3d 520 (2000).

Cited: *Fox v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 13, 592 S.W.3d 260 (2020).

9-10-121. Termination of certain parental rights for putative fathers convicted of rape.

(a) All rights of a putative father to custody, visitation, or other contact with a child conceived as a result of a rape shall be terminated immediately upon conviction of the rape in which the child was conceived under § 5-14-103.

(b) The biological mother of a child conceived as a result of rape may petition the court under § 9-10-104 to reinstate the parental rights of a putative father terminated under subsection (a) of this section.

(c) A putative father to a child conceived as a result of rape shall pay child support as provided under § 9-10-109.

(d) A child conceived as a result of rape is entitled to:

(1) Child support under § 9-10-109; and

(2) Inheritance under the Arkansas Inheritance Code of 1969, § 28-9-201 et seq.

History. Acts 2013, No. 210, § 1.

SUBCHAPTER 2 — ARTIFICIAL INSEMINATION

SECTION.

9-10-201. Child born to married or unmarried woman — Presumptions — Surrogate mothers.

SECTION.

9-10-202. Supervision by physician — Written agreement.

RESEARCH REFERENCES

ALR. Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Rights and obligations resulting from human artificial insemination. 83 A.L.R.4th 295.

Am. Jur. 41 Am. Jur. 2d, Illegitimate Children, § 2.

Ark. L. Rev. Artificial Insemination, 23 Ark. L. Rev. 81.

C.J.S. 67A C.J.S., Parent & Child, § 6.

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

9-10-201. Child born to married or unmarried woman — Presumptions — Surrogate mothers.

(a) Any child born to a married woman by means of artificial insemination shall be deemed the legitimate natural child of the woman and the woman's husband if the husband consents in writing to the artificial insemination.

(b) A child born by means of artificial insemination to a woman who is married at the time of the birth of the child shall be presumed to be the child of the woman giving birth and the woman's husband except in the case of a surrogate mother, in which event the child shall be that of:

(1) The biological father and the woman intended to be the mother if the biological father is married;

(2) The biological father only if unmarried; or

(3) The woman intended to be the mother in cases of a surrogate mother when an anonymous donor's sperm was utilized for artificial insemination.

(c)(1) A child born by means of artificial insemination to a woman who is unmarried at the time of the birth of the child shall be, for all legal purposes, the child of the woman giving birth, except in the case of a surrogate mother, in which event the child shall be that of:

(A) The biological father and the woman intended to be the mother if the biological father is married;

(B) The biological father only if unmarried; or

(C) The woman intended to be the mother in cases of a surrogate mother when an anonymous donor's sperm was utilized for artificial insemination.

(2) For birth registration purposes, in cases of surrogate mothers the woman giving birth shall be presumed to be the natural mother and shall be listed as such on the certificate of birth, but a substituted

certificate of birth may be issued upon orders of a court of competent jurisdiction.

History. Acts 1985, No. 904, §§ 1, 2; A.S.A. 1947, §§ 34-720, 34-721; Acts 1989, No. 647, § 1.

Cross References. Child conceived after death of parent, § 28-9-221.

RESEARCH REFERENCES

Ark. L. Rev. Brad Aldridge, Comment: A Constellation of Benefits and a Universe of Equal Protection: The Extension of the

Right to Marry Under Pavan v. Smith, 72 Ark. L. Rev. 245 (2019).

CASE NOTES

Estoppel.
Finding that the husband was estopped from denying that twins conceived by artificial insemination were not his was proper even though the written consent required by § 9-10-202(b) had not been obtained because the husband knew the facts and acted as if he agreed to the procedure; further, he accepted the children as his own. Brown v. Brown, 83 Ark. App. 217, 125 S.W.3d 840 (2003).

Even though father had been ordered to pay child support for children conceived through artificial insemination, collateral estoppel did not preclude him from raising the issue of consent in a subsequent action against a physician and a clinic alleging outrage and negligence because the issue was not dispositive in the divorce case. Brown v. Wyatt, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

9-10-202. Supervision by physician — Written agreement.

- (a) Artificial insemination of a woman shall only be performed under the supervision of a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.
- (b) Prior to conducting the artificial insemination, the supervising physician shall obtain from the woman and her husband or the donor of the semen a written statement attesting to the agreement to the artificial insemination, and the physician shall certify their signatures and the date of the insemination.

History. Acts 1985, No. 904, § 3; A.S.A. 1947, § 34-722.

CASE NOTES

ANALYSIS

Estoppel.
Wrongful Birth.
Estoppel.
Finding that the husband was estopped from denying that twins conceived by artificial insemination were not his was proper even though the written consent required by subsection (b) of this section

had not been obtained because the husband knew the facts and acted as if he agreed to the procedure; further, he accepted the children as his own. Brown v. Brown, 83 Ark. App. 217, 125 S.W.3d 840 (2003).

Wrongful Birth.
Summary judgment was properly granted to a physician and a clinic in an outrage claim based on their failure to

comply with subsection (b) of this section regarding an artificial insemination procedure on a wife because a wrongful birth

action was not cognizable under Arkansas law. *Brown v. Wyatt*, 89 Ark. App. 306, 202 S.W.3d 555 (2005).

CHAPTER 11
MARRIAGE

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. LICENSE AND CEREMONY.
- 3. MARRIAGE CONTRACTS GENERALLY.
- 4. ARKANSAS PREMARITAL AGREEMENT ACT.
- 5. RIGHTS AND PROPERTY OF MARRIED PERSONS.
- 6. RIGHTS IN REAL ESTATE OF INSANE SPOUSE.
- 7. VALIDATING ACTS.
- 8. COVENANT MARRIAGE ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-11-101. Marriage a civil contract — Consent of parties.
- 9-11-102. Minimum age — Parental consent — Definition.
- 9-11-103. Minimum age — Exception.
- 9-11-104. Minimum age — Lack of parental consent or misrepresentation of age — Annulment.
- 9-11-105. Marriage of underage parties voidable.

SECTION.

- 9-11-106. Incestuous marriages — Penalties for entering into or solemnizing.
- 9-11-107. Validity of foreign marriages.
- 9-11-108. Presumption of spouse's death — Validity of subsequent marriage.
- 9-11-109. Validity of same-sex marriages.

Effective Dates. Acts 1875, No. 102, § 2: effective six months after passage.

Acts 1941, No. 32, § 3: Feb. 6, 1941. Emergency clause provided: "Whereas, numerous marital contracts entered into between persons of immature ages continuously create serious domestic relations problems, and under present conditions the parent has insufficient control over the marriage contract of his minor child, all of which results in confusion, an emergency is declared to exist. This act being for the immediate preservation of public peace, health and safety, shall be in full force and effect from and after its passage."

Acts 1964 (1st Ex. Sess.), No. 5, § 3: Mar. 26, 1964. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law of this State provides that marriage

contracted by a male person under the age of eighteen (18) years or a female person under the age of sixteen (16) years is absolutely void; that there are many persons in this State who were married when one or both parties to the contract were under the ages set out above who believe themselves to be validly married and who have lived together as husband and wife for many years; that the fact that such marriages are declared void by the present laws of this State have resulted in and will continue to result in such persons being deprived of certain privileges and benefits to which such persons would have been entitled had their marriage not been deemed absolutely void by law; and that it is necessary that this inequity be corrected immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate

preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1971, No. 145, § 3: Feb. 22, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that there are many cases involving males under the age of eighteen (18) and females under the age of sixteen (16) wherein the female has given birth to a child, but under existing law the underage parties under these circumstances are prohibited from marrying. It is further determined by the General Assembly that where a child has been born to an underage couple that it would be in the interest of the couple, their families and the State of Arkansas that they be permitted to enter into the bonds of marriage. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1973, No. 79, § 3: Feb. 7, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that under the present laws of this State, males under eighteen (18) years of age cannot contract marriage even with parental consent but that such seventeen (17) year old males are in fact permitted and encouraged to serve in the armed forces of the United States and to do and perform many other acts which demonstrate their maturity; that it is unfair and inequitable to deprive these young men, seventeen (17) years of age of the privilege of contracting marriage and that this Act is designed to correct this situation and should be given effect immediately. Therefore, an emergency is declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 371, § 3: Mar. 9, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law provides that parental consent is required for the issuance of a marriage license to a male under the age of twenty-one (21) years but is not required in the instance of a female who is

over eighteen (18) years of age; that such distinction between males and females is unreasonable and that this act is immediately necessary to grant equal treatment to both the males and females as regards parental consent for obtaining a marriage license. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2008 (1st Ex. Sess.), No. 3, § 5: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that questions concerning the application of Act 441 of 2007 as enacted have arisen, and differing interpretations by the courts and county clerks require the immediate correction and clarification of the law to ensure uniform application of the minimum age requirement for marriage. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: 1. The date of its approval by the Governor; 2. If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or 2. If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 956, § 34: July 31, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that laws concerning juveniles need to be amended and updated; that the fair and efficient administration of juvenile law is highly important to society at large; and that this act is immediately necessary because the judiciary needs to begin addressing these changes in laws involving juveniles. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

ALR. Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.

Am. Jur. 52 Am. Jur. 2d, Marriage, § 1 et seq.

Ark. L. Rev. Domestic Relations — Annulment by Parents When Minors Are Above Statutory Marriage Age, 8 Ark. L. Rev. 113.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

The Cause of Action for Annulment of Marriage in Arkansas, 14 Ark. L. Rev. 85.

The Uniform Marriage and Divorce Act: Analysis for Arkansas, 28 Ark. L. Rev. 175.

C.J.S. 14A C.J.S., Civil R., § 234.

38A C.J.S., Gifts, § 68.

55 C.J.S., Marriage, § 1 et seq.

65 C.J.S., Names, §§ 4-6.

CASE NOTES

Reputation.

Where record evidence had been destroyed by fire, reputation of marriage was admissible to establish legitimacy of

issue. *Farmer v. Towers*, 106 Ark. 123, 152 S.W. 993 (1913).

Cited: *Pickens-Bond Constr. Co. v. Case*, 266 Ark. 323, 584 S.W.2d 21 (1979).

9-11-101. Marriage a civil contract — Consent of parties.

Marriage is considered in law a civil contract to which the consent of the parties capable in law of contracting is necessary.

History. Rev. Stat., ch. 94, § 1; C. & M. Dig., § 7036; Pope's Dig., § 9016; A.S.A. 1947, § 55-101.

CASE NOTES

ANALYSIS

Common-Law Marriage.
Consent of Parties.
Presumptions.
Regulation.

Common-Law Marriage.

A common-law marriage is invalid in this state. *Furth v. Furth*, 97 Ark. 272, 133 S.W. 1037 (1911).

Consent of Parties.

If a man marries a woman through fear of the consequences of seduction, the marriage will, nevertheless, be valid. *Honnett v. Honnett*, 33 Ark. 156 (1878); *Marvin v. Marvin*, 52 Ark. 425, 12 S.W. 875 (1890).

Presumptions.

Where a man and woman are living together as husband and wife, a valid

marriage is presumed. *Fountain v. Fountain*, 80 Ark. 481, 97 S.W. 656 (1906); *Darling v. Dent*, 82 Ark. 76, 100 S.W. 747 (1907).

Where a married man and a woman held themselves out as husband and wife, before and after his divorce, there was no presumption of a legal marriage. *O'Neill v. Davis*, 88 Ark. 196, 113 S.W. 1027 (1908).

Regulation.

Marriage is more than only a civil contract; it is a social and domestic relation subject to regulation under the state's police power. *Dodson v. State*, 61 Ark. 57, 31 S.W. 977 (1895).

9-11-102. Minimum age — Parental consent — Definition.

(a) Every male who has arrived at the full age of seventeen (17) years and every female who has arrived at the full age of seventeen (17) years shall be capable in law of contracting marriage.

(b)(1)(A) However, males and females under the age of eighteen (18) years shall furnish the clerk, before the marriage license can be issued, satisfactory evidence of the consent of the parent or parents or guardian to the marriage.

(B) As used in subdivision (b)(1)(A) of this section, “satisfactory evidence” means a verified affidavit signed in the presence of a notary that states that the parent or parents or guardian of the minor consents to the marriage.

(2)(A) The consent of both parents of each contracting party shall be necessary before the marriage license can be issued by the clerk unless the parents have been divorced and custody of the child has been awarded to one (1) of the parents exclusive of the other, or unless the custody of the child has been surrendered by one (1) of the parents through abandonment or desertion, in which cases the consent of the parent who has custody of the child shall be sufficient.

(B) The consent of the parent may be voided by the order of a circuit court on a showing by clear and convincing evidence that:

- (i) The parent is not fit to make decisions concerning the child; and
- (ii) The marriage is not in the child’s best interest.

(c) There shall be a waiting period of five (5) business days for any marriage license issued under subdivision (b)(2) of this section.

(d) If a child has a pending case in the circuit court, a parent who files consent under subsection (b) of this section shall immediately notify the circuit court, all parties, and attorneys to the pending case.

History. Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope’s Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102; Acts 2007, No. 441, § 1; 2008 (1st Ex.

Sess.), No. 3, § 1; 2009, No. 956, § 4; 2019, No. 849, § 1.

Amendments. The 2019 amendment substituted the second occurrence of “seventeen (17) years” for “sixteen (16) years” in (a); redesignated (b)(1) as (b)(1)(A); and added (b)(1)(B).

CASE NOTES

ANALYSIS

Out-of-State Marriage.
Parental Consent.

Out-of-State Marriage.

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

Parental Consent.

The Arkansas Code Revision Commission exceeded its authority when it altered the language of subsection (b) of this section to limit the right of a parent to consent to the marriage of a minor child. *Porter v. Ark. Dep’t of Health & Human Servs.*, 374 Ark. 177, 286 S.W.3d 686 (2008).

Cited: *Barnett v. State*, 35 Ark. 501 (1880).

9-11-103. Minimum age — Exception.

(a)(1) If an application for a marriage license is made where one (1) or both parties are under eighteen (18) years of age but older than sixteen (16) years of age and the female is pregnant, both parties may appear before a judge of the circuit court of the district where the application for a marriage license is being made.

(2) Evidence shall be submitted as to:

(A) The pregnancy of the female in the form of a certificate from a licensed and regularly practicing physician of the State of Arkansas;

(B) The birth certificates of both parties; and

(C) Parental consent of each party who may be under the minimum age.

(3) Thereupon, after consideration of the evidence and other facts and circumstances, if the judge finds that it is to the best interest of the parties, the judge may enter an order authorizing and directing the county clerk to issue a marriage license to the parties.

(4) The county clerk shall retain a copy of the order on file in the clerk's office with the other papers.

(b) However, if the female has given birth to the child, the court before whom the parties are to appear, if satisfied that it would be to the best interests of all the interested parties and if all the requirements of subsection (a) of this section are complied with, with the exception of the physician's certificate as to the pregnancy, may enter an order authorizing and directing the county clerk to issue a marriage license as provided in subsection (a) of this section.

History. Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102; Acts 2007, No. 441, § 2; 2008 (1st Ex. Sess.), No. 3, § 2; 2019, No. 849, § 2.

Amendments. The 2019 amendment

substituted "under eighteen (18) years of age but older than sixteen (16) years of age" for "under the minimum age prescribed in § 9-11-102" in (a)(1).

Cross References. County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

CASE NOTES**Out-of-State Marriages.**

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of

the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

Cited: *Barnett v. State*, 35 Ark. 501 (1880).

9-11-104. Minimum age — Lack of parental consent or misrepresentation of age — Annulment.

In all cases in which the consent of the parent or parents or guardian is not provided, or there has been a misrepresentation of age by a contracting party, the marriage contract may be set aside and annulled

upon the application of the parent or parents or guardian to the circuit court having jurisdiction of the cause.

History. Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, § 1; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, § 55-102.

CASE NOTES

ANALYSIS

Discretion of Court.

Evidence of Nonconsent.

Out-of-State Marriage.

Pregnancy.

Unclean Hands Doctrine.

Discretion of Court.

If parental consent is required for underage male or female, the trial court is entitled to exercise its discretion in determining whether marriage is to be set aside, since phrase "may be set aside" is used. *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

Trial court did not abuse its discretion in refusing to set aside marriage where parties were underage, if neither party testified. *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

Evidence of Nonconsent.

Evidence by parents of nonconsent to marriage was admissible under complaint by father to annul marriage of daughter where complaint alleged that daughter was underage and marriage was void.

Warner v. Warner, 221 Ark. 939, 256 S.W.2d 734 (1953).

Out-of-State Marriage.

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

Pregnancy.

Annulment of marriage of minor under the age of consent is not contrary to public policy notwithstanding wife's pregnancy. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

Unclean Hands Doctrine.

Theory of unclean hands is not applicable to action to annul marriage on grounds of nonage, even though party seeking relief made false statement as to age in affidavit for marriage. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

Cited: *Barnett v. State*, 35 Ark. 501 (1880).

9-11-105. Marriage of underage parties voidable.

(a) The marriage of any male under the full age of seventeen (17) years and the marriage of any female under the full age of sixteen (16) years is voidable.

(b) All marriages contracted prior to March 26, 1964, where one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are declared to be voidable only and shall be valid for all intents and purposes unless voided by a court of competent jurisdiction.

(c) All marriages contracted between July 30, 2007, and April 2, 2008, in which one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are voidable only and are valid for all intents and purposes unless voided by a court of competent jurisdiction.

History. Rev. Stat., ch. 94, § 2; C. & M. Dig., § 7037; Pope's Dig., § 9017; Acts 1941, No. 32, § 1; 1961, No. 497, § 1; 1963, No. 72, § 1; 1964 (1st Ex. Sess.), No. 5, §§ 1, 2; 1971, No. 145, § 1; 1973, No. 79, § 1; 1981, No. 371, § 1; A.S.A. 1947, §§ 55-102, 55-102.1; Acts 2008 (1st Ex. Sess.), No. 3, § 4.

CASE NOTES

Out-of-State Marriage.

Though the marriage of an underage person is void by the laws of this state, if the person is married in another state where the common law prevails the marriage will be deemed valid here. *Barnett v. State*, 35 Ark. 501 (1880) (decision prior to 1964 amendment).

This section, silent as to marriages of underage persons outside the state, has no effect upon such marriages, even of domiciled inhabitants, entered into out of the state. *State v. Graves*, 228 Ark. 378, 307 S.W.2d 545 (1957).

Cited: *Mitchell v. Mitchell*, 219 Ark. 69, 239 S.W.2d 748 (1951).

9-11-106. Incestuous marriages — Penalties for entering into or solemnizing.

(a) All marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, and between aunts and nephews, and between first cousins are declared to be incestuous and absolutely void. This section shall extend to illegitimate children and relations.

(b) Whoever contracts marriage in fact, contrary to the prohibitions of subsection (a) of this section, and whoever knowingly solemnizes the marriage shall be deemed guilty of a misdemeanor and shall upon conviction be fined or imprisoned, or both, at the discretion of the jury who shall pass on the case, or if the conviction shall be by confession, or on demurrer, then at the discretion of the court.

History. Rev. Stat., ch. 94, §§ 3, 9; Acts 1875, No. 102, § 1, p. 221; C. & M. Dig., §§ 7038, 7045; Pope's Dig., §§ 9018, 9025; Acts 1973, No. 253, § 1; A.S.A. 1947, §§ 55-103, 55-105.

Cross References. Incest, § 5-26-202.

CASE NOTES

First Cousins.

A marriage between first cousins does not create "much social alarm," so that the marriage will be recognized if it was valid by the law of the state in which it took place. *Etheridge v. Shaddock*, 288 Ark. 481, 706 S.W.2d 395 (1986).

Where after divorce and awarding of custody of children to father, he married

his first cousin and when they discovered that such marriages were prohibited in Arkansas had such marriage annulled and got married in state permitting such marriages and returned to Arkansas, such remarriage was not a sufficient basis for change of custody. *Etheridge v. Shaddock*, 288 Ark. 481, 706 S.W.2d 395 (1986).

9-11-107. Validity of foreign marriages.

(a) All marriages contracted outside this state that would be valid by the laws of the state or country in which the marriages were consummated and in which the parties then actually resided shall be valid in all the courts in this state.

(b) This section shall not apply to a marriage between persons of the same sex.

History. Rev. Stat., ch. 94, § 7; C. & M. Dig., § 7043; Pope's Dig., § 9023; A.S.A. 1947, § 55-110; Acts 1997, No. 144, § 2.

RESEARCH REFERENCES

Ark. L. Notes. Watkins, A Guide to Choice of Law in Arkansas, 2005 Arkansas L. Notes 151.

Ark. L. Rev. Britta Palmer Stamps, Recent Developments: Same-Sex Mar-

riage — United States District Judge Kristine Baker Declares Arkansas's Marriage Laws Unconstitutional, 67 Ark. L. Rev. 1111 (2014).

CASE NOTES

ANALYSIS

Constitutionality.
Common-Law Marriages.
Indian Territory.
Residency.

Constitutionality.

Arkansas law violated Due Process Clause and Equal Protection Clause of Fourteenth Amendment to the United States Constitution because it precluded same-sex couples from exercising their fundamental right to marry in Arkansas, refused to recognize valid same-sex marriages from other states, and discriminated on the basis of gender. *Jernigan v. Crane*, 64 F. Supp. 3d 1261 (E.D. Ark. 2014), *aff'd* 796 F.3d 976 (8th Cir. 2015).

Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Laws denying same-sex couples the right to marry are unconstitutional. *Jernigan v. Crane*, 796 F.3d 976 (8th Cir. 2015).

Common-Law Marriages.

A common-law marriage contracted in another state, and valid there, is valid here. *Darling v. Dent*, 82 Ark. 76, 100 S.W. 747 (1907); *Evatt v. Miller*, 114 Ark. 84, 169 S.W. 817 (1914); *Estes v. Merrill*, 121 Ark. 361, 181 S.W. 136 (1915).

Where parties cohabited in Arkansas and temporarily sojourned in a state

where common-law marriage was recognized, they could not by that conduct alone become legally man and wife. *Walker v. Yarbrough*, 257 Ark. 300, 516 S.W.2d 390 (1974).

Common-law marriages are not permitted in Arkansas, but the state will recognize marriages contracted in another state which are valid by the laws of that state. One seeking to prove the existence of a valid common-law marriage in another state must do so by a preponderance of the evidence. *Knaus v. Relyea*, 24 Ark. App. 7, 746 S.W.2d 389 (1988).

Residency in a state in which a common law marriage may be created is necessary for the recognition of the common law marriage in Arkansas. *Brissett v. Sykes*, 313 Ark. 515, 855 S.W.2d 330 (1993).

Trial court properly found that there was no common law marriage between a decedent and his alleged spouse, who had lived together in Alberta, Canada, because Alberta statutory law did not recognize such marriages and the decedent and alleged wife had not lived as married for three years in order to meet the Alberta case law definition; hence, under subsection (a) of this section there was no valid marriage that could be recognized in Arkansas. *Craig v. Carrigo*, 353 Ark. 761, 121 S.W.3d 154 (2003).

Circuit court did not clearly err in finding that no common-law marriage existed between the parties, because the parties lived in Arkansas, which did not recognize common-law marriages, the wedding ceremony took place in Texas without obtaining a marriage license or certificate, and

there was no evidence that the parties lived together in Texas after the ceremony. *Crane v. Taliaferro*, 2009 Ark. App. 336, 308 S.W.3d 648 (2009).

Indian Territory.

Laws relating to marriage in the Indian Territory must be proved. *Johnson v. State*, 60 Ark. 45, 28 S.W. 792 (1894).

Residency.

Circuit court properly granted comity to the marriage license issued to a son's mother and her husband in 1994 and

denied the son's petition to quash the husband's motion to terminate the son's guardianship over his mother; while the husband and the mother never resided in Louisiana, it was undisputed that their marriage on a boat by a captain was valid under Louisiana law. *Stovall v. Preston*, 2018 Ark. App. 64, 539 S.W.3d 638 (2018).

Cited: *Bickford v. Carden*, 215 Ark. 560, 221 S.W.2d 421 (1949); *Stilley v. Stilley*, 219 Ark. 813, 244 S.W.2d 958 (1952); *May v. Daniels*, 359 Ark. 100, 194 S.W.3d 771 (2004).

9-11-108. Presumption of spouse's death — Validity of subsequent marriage.

In all cases in which any husband abandons his wife, or a wife her husband, and resides beyond the limits of this state for the term of five (5) successive years, without being known to the other spouse to be living during that time, the abandoning party's death shall be presumed. Any subsequent marriage entered into after the end of the five (5) years shall be as valid as if the husband or wife were dead.

History. Rev. Stat., ch. 94, § 8; C. & M. Dig., § 7044; Pope's Dig., § 9024; A.S.A. 1947, § 55-109.

Cross References. Presumption of death, § 16-40-105.

CASE NOTES

ANALYSIS

Abandonment.
Burden of Proof.
Presumptions.

Abandonment.

Evidence inconsistent with the theory of abandonment. *Cole v. Cole*, 249 Ark. 824, 462 S.W.2d 213 (1971).

Burden of Proof.

It is settled that neither the fact of death nor that of absence from the state can be inferred from the bare fact of a disappearance. Petitioner has the burden of producing evidence from which the court might fairly conclude that first hus-

band had lived continuously outside the state for at least five years before the petitioner's second marriage. *Baxter v. Baxter*, 232 Ark. 151, 334 S.W.2d 714 (1960).

Presumptions.

Where the presumption of death was overcome by substantial evidence, the court was warranted in finding the subsequent marriage invalid. *Goset v. Goset*, 112 Ark. 47, 164 S.W. 759 (1914).

Presumption in favor of validity of second marriage does not apply if separation from first wife was by mutual consent. *Watson v. Palmer*, 219 Ark. 178, 240 S.W.2d 875 (1951).

9-11-109. Validity of same-sex marriages.

Marriage shall be only between a man and a woman. A marriage between persons of the same sex is void.

History. Acts 1997, No. 144, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Britta Palmer Stamps, Recent Developments: Same-Sex Marriage — United States District Judge

Kristine Baker Declares Arkansas's Marriage Laws Unconstitutional, 67 Ark. L. Rev. 1111 (2014).

CASE NOTES

Constitutionality.

Arkansas law violated Due Process Clause and Equal Protection Clause of Fourteenth Amendment to the United States Constitution because it precluded same-sex couples from exercising their fundamental right to marry in Arkansas, refused to recognize valid same-sex marriages from other states, and discriminated on the basis of gender. *Jernigan v. Crane*, 64 F. Supp. 3d 1261 (E.D. Ark. 2014), *aff'd* 796 F.3d 976 (8th Cir. 2015).

Fourteenth Amendment requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Laws denying same-sex couples the right to marry are unconstitutional. *Jernigan v. Crane*, 796 F.3d 976 (8th Cir. 2015).

SUBCHAPTER 2 — LICENSE AND CEREMONY

SECTION.

- 9-11-201. Licenses required.
- 9-11-202. Form of license.
- 9-11-203. Issuance by clerks.
- 9-11-204. Issuance of license unlawfully — Penalty.
- 9-11-205. Notice of intention to wed — Noncompliance, penalties, and effect.
- 9-11-206. Clerk's fees.
- 9-11-207. Applicants for marriage licenses to be sober.
- 9-11-208. License not issued to persons of the same sex.
- 9-11-209. Proof of age — Parental consent.
- 9-11-210. Bond of applicant.
- 9-11-211. Military personnel — Waiver of certain license requirements — Proceedings.
- 9-11-212. Application without other's consent — Penalties — Damages.

SECTION.

- 9-11-213. Persons who may solemnize marriages.
- 9-11-214. Recordation of credentials of clerical character.
- 9-11-215. Marriage ceremony.
- 9-11-216. Solemnization contrary to law — Penalty.
- 9-11-217. Failure to sign and return license at time of marriage — Penalty.
- 9-11-218. Return of executed license to clerk — Effect on bond.
- 9-11-219. False return or record — Penalty.
- 9-11-220. Duty of clerk on return of license — Issuance of certificate.
- 9-11-221. Certified copies of record as evidence.

Cross References. Marriage license fees, generally, § 14-20-111.

Marriage license fees, miscellaneous county clerk fees, § 21-6-406.

Marriage registration, § 20-18-501.

Effective Dates. Acts 1843, p. 55, § 3: Apr. 1, 1843.

Acts 1873, No. 2, § 4: effective on pas-

sage, provided the penalty prescribed in the act should not be enforced within 60 days.

Acts 1875, No. 127, § 10: effective 30 days after passage.

Acts 1885, No. 123, § 2: effective on passage.

Acts 1901, No. 123, § 3: effective on passage.

Acts 1941, No. 404, § 3: Mar. 27, 1941. Emergency clause provided: "It being found by the General Assembly that this act is necessary for the better living conditions of the people of Arkansas and this act being necessary for the preservation of the public health, peace and safety, an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1945, No. 112, § 7: Feb. 27, 1945. Emergency clause provided: "Due to prevailing conditions the need for such a law is urgent, therefore, it is necessary for the immediate preservation of the public peace, health and safety, an emergency is declared, and this act shall take effect and be in force from and after its passage."

Acts 1967, No. 380, § 4: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that there are many residents of this State of marriageable age in the Armed Forces of the United States; that such persons' furloughs are often too short to permit an Arkansas marriage because of the many and cumbersome requirements of Arkansas law; that it is necessary that these requirements be waived to give special consideration to those persons who are residents of this State but who are on active duty in the Armed Forces of the United States; and that in order to remedy these onerous requirements of Arkansas in the case of military personnel and to encourage Arkansas marriages, it is necessary that this act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety of this State shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 419, § 3: Mar. 13, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that present law requires marriage license applications to be signed by at least one person other than the applicant; that such law is unduly burdensome and in need of revision; and that this Act is immediately necessary to provide such revision. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 862, § 5: Mar. 27, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the current law relating to persons who may solemnize marriages is unclear with respect to the authority of some judges; that unless the ambiguity is corrected immediately, marriages by such judges may be the subject of controversy and may leave the validity of some marriages in doubt; that this act is designed to clarify this ambiguity and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2008 (1st Ex. Sess.), No. 3, § 5: Apr. 2, 2008. Emergency clause provided: "It is found and determined by the General Assembly that questions concerning the application of Act 441 of 2007 as enacted have arisen, and differing interpretations by the courts and county clerks require the immediate correction and clarification of the law to ensure uniform application of the minimum age requirement for marriage. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: 1. The date of its approval by the Governor; 2. If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or 2. If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 897, § 21: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it would be prudent to abolish the State Child Abuse and Neglect Prevention Board and transfer the powers and duties of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; that this act facilitates the timely

transfer of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; and that this act is necessary for alignment with the fiscal year. Therefore, an emergency is declared

to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017.”

RESEARCH REFERENCES

ALR. Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.
Am. Jur. 52 Am. Jur. 2d, Marriage, § 15 et seq.

Ark. L. Rev. The Uniform Marriage and Divorce Act: Analysis for Arkansas, 28 Ark. L. Rev. 175.
C.J.S. 55 C.J.S., Marriage, § 27 et seq.

9-11-201. Licenses required.

- (a) All persons hereafter contracting marriage in this state are required to first obtain a license from the clerk of the county court of some county in this state.
- (b) On and after July 1, 1997, the county clerk shall record the Social Security numbers of the persons obtaining a marriage license on the marriage license application or the coupon for the marriage license. If an applicant does not possess a Social Security number, the clerk shall note this representation on the marriage license application or the coupon for the marriage license.
- (c)(1) The county clerk shall transmit Social Security numbers of marriage license applicants to the Division of Vital Records. The clerk is not required to otherwise maintain or report the Social Security numbers of marriage license applicants. Compliance with the Social Security number reporting requirements of this section by the clerk of the county court shall be deemed to satisfy licensing entity reporting requirements under this section relative to marriage licenses.
- (2) The Division of Vital Records shall allow the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration access to such Social Security information and on an automated basis to the maximum extent feasible.

History. Acts 1875, No. 127, § 1, p. 260; C. & M. Dig., § 7057; Pope’s Dig., § 9039; A.S.A. 1947, § 55-201; Acts 1997, No. 1163, § 2; 1997, No. 1296, § 41.
A.C.R.C. Notes. Acts 1997, No. 1296 added material in addition to that which was added by Acts 1997, No. 1163. There-

fore, the two amendments were merged pursuant to § 1-2-303.
Cross References. County offices defined, § 14-14-603.
Distribution of powers of county governments, § 14-14-502.

CASE NOTES

ANALYSIS

Foreign License.
Presumption of Legitimacy of Children.

Foreign License.

Arkansas residents may legally contract marriage in Arkansas with a license issued by a foreign state since the statute providing for an Arkansas marriage license for persons contracting marriage in the state is directory and not mandatory, so that a marriage was valid when performed by a duly qualified minister on the Arkansas side of Texarkana for parties who were licensed on the Texas side of the

city. *De Potty v. De Potty*, 226 Ark. 881, 295 S.W.2d 330 (1956).

Presumption of Legitimacy of Children.

The presumption of legitimacy of children born during wedlock is not overcome by evidence that a marriage license for the parents was never issued or recorded, since marriage license statutes are merely directory and not mandatory, and, although this section provides for the procurement of a license by those contracting marriage, Arkansas has no statute providing that a marriage is void when no license is obtained. *Wright v. Vales*, 1 Ark. App. 175, 613 S.W.2d 850 (1981).

9-11-202. Form of license.

(a) The license may be in the following form:

“State of Arkansas,

County of

To any person authorized by law to solemnize marriage:

You are hereby commanded to solemnize the rites and publish the banns of matrimony between A. B., age years, and D. C., age years, according to law, and officially sign and return this license to the parties herein named.

Issued with official seal, this day of, 20....

[L. S.]”

(b) The party solemnizing the rites of matrimony shall endorse on the license his or her certificate of that fact in the following form:

“State of Arkansas,

County of ss

I, A. B., do hereby certify that on the day of, 20...., I did duly, and according to law as commanded in the foregoing license, solemnize the rites and publish the banns of matrimony between the parties herein named.

Witness my hand this day of, 20

.....
A. B., Justice of the Peace”

(Or insert whatever title the party has, as minister, etc.)

(c) If the parties intend to contract a covenant marriage, the application for a marriage license must also include the following statement completed by at least one (1) of the two (2) parties:

“We, [insert name of spouse] and [insert name of spouse], declare our intent to contract a covenant marriage and accordingly have executed the attached declaration of intent.”

History. Acts 1875, No. 127, § 3, p. 260; C. & M. Dig., § 7060; Pope's Dig., § 9042; A.S.A. 1947, § 55-204; Acts 2001, No. 1486, § 1; 2015, No. 1127, § 1.

Amendments. The 2015 amendment, in (a), substituted "Issued with" for "Witness my hand and" and deleted "A.B., County Clerk" at the end.

Cross References. County offices defined, § 14-14-603.

Covenant Marriage Act, § 9-11-801 et seq.

Distribution of powers of county governments, § 14-14-502.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

9-11-203. Issuance by clerks.

(a) The clerks of the county courts of the several counties in this state are required to furnish the license upon:

- (1) Application's being made;
- (2) Being fully assured that applicants are lawfully entitled to the license; and
- (3) Receipt of his or her fee.

(b) It shall be lawful for clerks of the circuit courts to issue marriage licenses in counties having two (2) judicial districts.

(c)(1) In addition to the standard certificate of marriage issued under subsection (a) of this section, the county clerk shall offer and, upon payment of a fee established by rule promulgated by the Department of Human Services, issue an heirloom certificate of marriage.

(2)(A) The department shall adopt rules for the design of the heirloom certificate and shall print and distribute the certificates to each county clerk in this state.

(B)(i) The department shall set the amount of the fee for the heirloom certificates to exceed the estimated actual costs for the development and distribution of the certificates but not to exceed the estimated fair market value of a comparable artistic rendition.

(ii) The fee is in addition to any other fee established by law for the issuance of a certificate of marriage.

(iii) The additional fees from the sale of heirloom certificates shall be transmitted monthly by the county clerk to the Treasurer of State for deposit into the State Treasury to the credit of the Children's Trust Fund.

(3)(A) The heirloom certificate shall be in a form consistent with the need to protect the integrity of vital records and suitable for display.

(B) It may bear the seal of the state and may be signed by the Governor.

(4) An heirloom certificate of marriage issued under this subsection has the same status as evidence as the standard certificate of marriage issued under subsection (a) of this section.

(5) Heirloom certificates of marriage may be issued for any marriage certificate issued at any time in this state, whether before or after August 13, 2001.

(d) It is not a requirement that a marriage license be signed by a county clerk for the license to be effective.

History. Acts 1875, No. 127, § 2, p. 260; 1901, No. 123, § 1, p. 194; C. & M. Dig., §§ 7058, 7059; Pope's Dig., §§ 9040, 9041; A.S.A. 1947, §§ 55-202, 55-203; Acts 2001, No. 968, § 1; 2015, No. 1127, § 2; 2017, No. 897, § 2.

Amendments. The 2015 amendment added (d).

The 2017 amendment, in (c)(1), substituted "rule" for "regulation" and "Depart-

ment of Human Services" for "State Child Abuse and Neglect Prevention Board"; and substituted "department" for "board" in (c)(2)(A) and (c)(2)(B)(i).

Cross References. Additional county fee on marriage licenses, § 14-20-111.

County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

9-11-204. Issuance of license unlawfully — Penalty.

If any county clerk in this state shall issue any license contrary to the provisions of this act, or to any persons who are declared by law as not entitled to the license, he or she shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

History. Acts 1875, No. 127, § 8 (1st part), p. 260; C. & M. Dig., § 7065; Pope's Dig., § 9047; A.S.A. 1947, § 55-214.

Meaning of "this act". Acts 1875, No. 127, codified as §§ 9-11-201 — 9-11-204, 9-11-209, 9-11-210, 9-11-212, 9-11-216 — 9-11-218, and 9-11-220.

Cross References. County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

9-11-205. Notice of intention to wed — Noncompliance, penalties, and effect.

(a) No marriage license shall be issued by the clerks unless a notice of intention to wed shall have been signed by both of the applicants applying for the marriage license and filed with the county clerk where the license is obtained.

(b) The notice shall state the name, age, and address of both parties desiring to wed.

(c) The county clerk shall verify the age of both parties and may treat birth certificates as prima facie proof of age.

(d) The notice of intention to wed referred to in this section shall be filed with the county clerk of the county where the marriage license is obtained.

(e) The county clerk may destroy the notice of intention to wed one (1) year after the date of its issuance.

(f) Upon the failure on the part of the county clerk or any other person to comply with the provisions of this section, he or she shall be adjudged guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(g) No marriage shall be void for failure to comply with the provisions of this section.

(h) If applicable, the notice of intention to wed shall contain the declaration of intent for a covenant marriage as provided in the Covenant Marriage Act of 2001, § 9-11-801 et seq.

History. Acts 1945, No. 112, §§ 1, 3-5; 1957, No. 119, § 1; 1959, No. 52, § 1; 1981, No. 788, § 1; 1983, No. 712, § 1; A.S.A. 1947, §§ 55-205, 55-207 — 55-209; Acts 2001, No. 1486, § 2.

Cross References. Content of declaration of intent, § 9-11-804.
County offices defined, § 14-14-603.
Distribution of powers of county governments, § 14-14-502.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

9-11-206. Clerk's fees.

The fee prescribed by law for the issuance of the marriage license shall be paid to the clerk at the time the applicants apply for the marriage license and sign the notice of intention to wed.

History. Acts 1945, No. 112, § 1; 1959, No. 52, § 1; 1981, No. 788, § 1; 1983, No. 712, § 1; A.S.A. 1947, § 55-205.

fees, generally, § 14-20-111.

Marriage license fees, miscellaneous county clerk fees, § 21-6-406.

Cross References. Marriage license

9-11-207. Applicants for marriage licenses to be sober.

It shall be unlawful for any clerk who is authorized to issue marriage licenses to furnish or sell to any person or persons a license to marry at a time when either of the contracting parties is visibly under the influence of intoxicating drinks or under the influence of any kind of drugs. The parties applying for the license shall at the time be duly sober.

History. Acts 1941, No. 404, § 1; A.S.A. 1947, § 55-210.

9-11-208. License not issued to persons of the same sex.

(a)(1)(A) It is the public policy of the State of Arkansas to recognize the marital union only of man and woman.

(B) A license shall not be issued to a person to marry another person of the same sex, and no same-sex marriage shall be recognized as entitled to the benefits of marriage.

(2) Marriages between persons of the same sex are prohibited in this state. Any marriage entered into by a person of the same sex, when a marriage license is issued by another state or by a foreign jurisdiction, shall be void in Arkansas, and any contractual or other rights granted by virtue of that license, including its termination, shall be unenforceable in the Arkansas courts.

(3) However, nothing in this section shall prevent an employer from extending benefits to a person who is a domestic partner of an employee.

(b) A license shall not be issued to a person to marry unless and until the female shall attain the age of sixteen (16) years and the male the age of seventeen (17) years and then only by written consent by a parent or guardian until the male shall have attained the age of eighteen (18) years and the female the age of eighteen (18) years.

History. Acts 1941, No. 404, § 2; A.S.A. 1947, § 55-211; Acts 1997, No. 146, §§ 1, 2; 2007, No. 441, § 3; 2008 (1st Ex. Sess.), No. 3, § 3; 2011, No. 793, § 2.

A.C.R.C. Notes. Former § 9-11-222 was added to this section as present subdivision (a)(3) pursuant to § 1-2-303(d)(4).

RESEARCH REFERENCES

Ark. L. Rev. Britta Palmer Stamps, Recent Developments: Same-Sex Marriage — United States District Judge

Kristine Baker Declares Arkansas's Marriage Laws Unconstitutional, 67 Ark. L. Rev. 1111 (2014).

CASE NOTES

Constitutionality.

Arkansas law violated Due Process Clause and Equal Protection Clause of Fourteenth Amendment to the United States Constitution because it precluded same-sex couples from exercising their fundamental right to marry in Arkansas, refused to recognize valid same-sex marriages from other states, and discriminated on the basis of gender. *Jernigan v. Crane*, 64 F. Supp. 3d 1261 (E.D. Ark. 2014), *aff'd* 796 F.3d 976 (8th Cir. 2015).

The Fourteenth Amendment requires a

state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. *Obergefell v. Hodges*, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

Laws denying same-sex couples the right to marry are unconstitutional. *Jernigan v. Crane*, 796 F.3d 976 (8th Cir. 2015).

Cited: *Smith v. Wright*, 2014 Ark. 222 (2014).

9-11-209. Proof of age — Parental consent.

(a) Any person applying for the license to marry another may introduce the parent or guardian of himself or herself or the other party, or the certificate of the parent or guardian duly attested, to prove to the satisfaction of the clerk that the parties to the marriage are of lawful age.

(b) In case either or both of the parties to the marriage are not of lawful age, it shall be the duty of the clerk, before issuing the license, to require the party applying therefor to produce satisfactory evidence of the consent and willingness of the parent or guardian of the party to the marriage, which shall consist of either verbal or written consent thereto.

(c) If there are any doubts in the mind of the clerk as to the evidence of the consent and willingness of the parent or guardian of the party applying for the license or if the clerk is in doubt as to the true age of the party so making application, the clerk may require the applicants to

furnish a copy of their birth certificates as proof of lawful age or may require the parties to make affidavit to the genuineness of the consent granted or to the correctness of the ages given. The affidavit so made shall be filed in the clerk's office for public inspection.

History. Acts 1875, No. 127, § 5, p. 260; 1885, No. 123, § 1, p. 200; C. & M. Dig., § 7062; Pope's Dig., § 9044; Acts 1963, No. 117, § 1; A.S.A. 1947, § 55-212.

CASE NOTES

ANALYSIS

Purpose.
Annulment.
Perjury.

Purpose.

This section was enacted for the protection of the county clerk and has nothing whatever to do with the annulment of marriages for failure to first obtain consent of parents or guardians. *Witherington v. Witherington*, 200 Ark. 802, 141 S.W.2d 30 (1940).

Annulment.

False statement as to age in affidavit for marriage license did not estop affiant from seeking to annul the marriage on ground of nonage. *Hood v. Hood*, 206 Ark. 1057, 178 S.W.2d 670 (1944).

Perjury.

Making false affidavit for license is perjury. *Cox v. State*, 164 Ark. 126, 261 S.W. 303 (1924).

9-11-210. Bond of applicant.

(a) Any person applying for a license under the provisions of this act shall be required to enter into bond to the State of Arkansas in the penal sum of one hundred dollars (\$100) for the use of and benefit of the general fund of the county to ensure that the parties applying have a lawful right to the license and that they will faithfully carry into effect and comply with the provisions of this act.

(b) The bond shall be void when the license is duly returned to the office of the county clerk, duly executed and officially signed by someone authorized by law to solemnize the rites of matrimony.

History. Acts 1875, No. 127, § 4, p. 260; C. & M. Dig., § 7061; Pope's Dig., § 9043; Acts 1983, No. 419, § 1; A.S.A. 1947, § 55-213; Acts 1999, No. 1540, § 1.

Meaning of "this act". See note to § 9-11-204.

Cross References. County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

9-11-211. Military personnel — Waiver of certain license requirements — Proceedings.

(a)(1) Upon written petition being filed with the county clerk of any county in this state, the county court, after hearing, may in its discretion waive by written order the requirement of bond, as prescribed by § 9-11-210, and the consent of parents, as required by §§ 9-11-102 — 9-11-105. The court may authorize and direct the county clerk to forthwith issue a license to marry to any resident of this state

who is on active duty with the United States Armed Forces or to any resident of this state to marry a person who is on active duty with the United States Armed Forces.

(2) Nothing in this section is to be considered as reducing the statutory marriageable age of females not in the military service.

(b)(1) The petition shall be signed and properly verified by both the parties seeking the license to marry and shall be styled "In the Matter of the Issuance of a Marriage License to a Member of the Armed Forces of the United States of America".

(2) The petition shall set out the full name and address of each party, the military serial number of the service man or woman, rank, and military organization to which he or she is attached.

(3) The birth certificate of the nonservice man or woman shall be attached to the petition as an exhibit.

(4) The parties shall personally appear before the court, and the service man or woman will appear in uniform and exhibit to the court his or her military identification card.

(5) The parties will be required to execute the notice of intention to wed as prescribed by § 9-11-205 and file the notice with the county clerk.

(c) The county courts of this state for the purpose of this section shall be open and in session during regular office hours.

History. Acts 1967, No. 380, §§ 1-3; fined, § 14-14-603.
A.S.A. 1947, §§ 55-247 — 55-249. Distribution of powers of county govern-
Cross References. County offices de- ments, § 14-14-502.

9-11-212. Application without other's consent — Penalties — Damages.

(a) If any person shall apply for and obtain a license to marry another, without first obtaining the consent of that party, the person shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). The fines, when collected, shall be paid into the general fund of the county wherein the offense is tried.

(b) The party so doing shall moreover be liable to the party injured in any sum that a court or jury of competent jurisdiction may adjudge for damages.

History. Acts 1875, No. 127, § 7, p. § 9046; A.S.A. 1947, § 55-215; Acts 1999, 260; C. & M. Dig., § 7064; Pope's Dig., No. 1540, § 2.

9-11-213. Persons who may solemnize marriages.

(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:

- (1) The Governor;
- (2) Any former justice of the Supreme Court;

(3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more;

(4) Any justice of the peace, including any former justice of the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55;

(5) Any regularly ordained minister or priest of any religious sect or denomination;

(6) The mayor of any city or town;

(7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or

(8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.

(b)(1) Marriages solemnized through the traditional rite of the Religious Society of Friends, more commonly known as Quakers, are recognized as valid to all intents and purposes the same as marriages otherwise contracted and solemnized in accordance with law.

(2) The functions, duties, and liabilities of a party solemnizing marriage, as set forth in the marriage laws of this state, in the case of marriages solemnized through the traditional marriage rite of the Religious Society of Friends, shall be incumbent upon the clerk of the congregation or, in his or her absence, his or her duly designated alternate.

History. Rev. Stat., ch. 94, § 10; Acts 1873, No. 2, § 1, p. 2; C. & M. Dig., § 7046; Pope's Dig., § 9026; Acts 1947, No. 231, § 1; 1977, No. 95, § 2; 1979, No. 693, § 1; 1983, No. 850, § 1; A.S.A. 1947, § 55-216; Acts 1987, No. 394, § 1; 1997,

No. 862, § 1; 2001, No. 1068, § 1; 2003, No. 1185, § 16; 2007, No. 98, § 1.

A.C.R.C. Notes. With respect to the duties of persons solemnizing marriages, see also § 20-18-501.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

9-11-214. Recordation of credentials of clerical character.

(a) No minister of the gospel or priest of any religious sect or denomination shall be authorized to solemnize the rites of matrimony in this state until the minister or priest has caused to be recorded his or her license or credentials of his or her clerical character in the office of the county clerk of some county in this state. The minister or priest must also have obtained from the clerk a certificate, under his or her hand and seal, that the credentials are duly recorded in his or her office.

(b) It shall be the duty of a minister of the gospel or priest to add to the certificate of marriage required by law a statement setting forth the county where and the time when his or her license or credentials were so recorded.

(c) Any minister of the gospel, priest of any religious sect or denomination, or any person purporting to be such, who shall solemnize the rites of matrimony contrary to the provisions of this section, shall be deemed guilty of a misdemeanor. On conviction he or she shall be fined in any sum not less than one hundred dollars (\$100).

(d)(1) It shall be the duty of the clerk and recorder in each county, seasonably to record, in a well-bound book to be kept for that purpose, all licenses or credentials of clerical character of the persons who deposit the licenses or credentials of clerical character with him or her for record.

(2) Any clerk failing to comply with the provisions of this subsection shall, on motion of the party aggrieved, giving the clerk ten (10) days' notice in writing of the motion, be fined any sum not exceeding one hundred dollars (\$100).

History. Rev. Stat., ch. 94, §§ 11, 22, 23; Acts 1843, §§ 2, 3, p. 55; Acts 1873, No. 2, §§ 2, 3, p. 2; C. & M. Dig., §§ 7047, 7049, 7053, 7054; Pope's Dig., §§ 9027, 9029, 9033, 9034; Acts 1947, No. 93, § 1; A.S.A. 1947, §§ 55-218 — 55-221.

Cross References. Acts validating recordation of credentials of clerical character, § 9-11-703.

County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

CASE NOTES

ANALYSIS

Construction.

Revocation of Credentials.

Construction.

The statutes regulating and prescribing the manner and form in which marriages may be solemnized in this state are mandatory and not directory. *Spicer v. Spicer*, 239 Ark. 1013, 397 S.W.2d 129 (1965).

Revocation of Credentials.

In a suit to enjoin a church organization and the county clerk from attempting to cancel licenses and credentials filed according to this section, civil courts will not assume jurisdiction of a dispute involving church doctrine or discipline unless property rights are involved. *Kinder v. Webb*, 239 Ark. 1101, 396 S.W.2d 823 (1965).

9-11-215. Marriage ceremony.

(a) When marriages are solemnized by a minister of the gospel or priest, the ceremony shall be according to the forms and customs of the church or society to which he or she belongs. When solemnized by a civil officer, the form observed shall be the one the officer deems most appropriate.

(b) It shall be lawful for religious societies who reject formal ceremonies to join together in marriage persons who are members of the society according to the forms, customs, or rites of the society to which they belong, with the exception that the requirements set forth in the Covenant Marriage Act of 2001, § 9-11-801 et seq., shall be complied with if the parties enter into a covenant marriage.

History. Rev. Stat., ch. 94, §§ 12, 13; C. & M. Dig., §§ 7050, 7051; Pope's Dig., §§ 9030, 9031; A.S.A. 1947, §§ 55-222, 55-223; Acts 2001, No. 1486, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Family Law, 24 U. Ark. Little
Legislation, 2001 Arkansas General As- Rock L. Rev. 483.

CASE NOTES

Construction. may be solemnized in this state are man-
The statutes regulating and prescribing datory and not directory. *Spicer v. Spicer*,
the manner and form in which marriages 239 Ark. 1013, 397 S.W.2d 129 (1965).

9-11-216. Solemnization contrary to law — Penalty.

- (a) Any person who presumes to solemnize marriage in this state contrary to the provisions of this act shall be adjudged guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (b) The fine imposed by subsection (a) of this section shall be paid when collected into the general fund of the county in which the offense was committed.

History. Acts 1875, No. 127, § 8 (last part), p. 260; C. & M. Dig., § 7066; Pope’s Dig., § 9048; A.S.A. 1947, § 55-217; Acts 1999, No. 1540, § 3.

Meaning of “this act”. See note to § 9-11-204.

CASE NOTES

ANALYSIS

datory and not directory. *Spicer v. Spicer*,
239 Ark. 1013, 397 S.W.2d 129 (1965).

Construction.

Notary Public.

Construction.

The statutes regulating and prescribing the manner and form in which marriages may be solemnized in this state are man-

Notary Public.

A notary public has no authority to solemnize a marriage, and it is immaterial that he told the parties he could not marry them. *Pearce v. State*, 97 Ark. 5, 132 S.W. 986 (1910).

9-11-217. Failure to sign and return license at time of marriage — Penalty.

- (a) Any person who fails to officially sign and return any license to the parties at the time of the marriage shall be adjudged guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (b) The fine imposed by subsection (a) of this section shall be paid when collected into the general fund of the county in which the offense was committed.

History. Acts 1875, No. 127, § 8 (last part), p. 260; C. & M. Dig., § 7066; Pope’s Dig., § 9048; A.S.A. 1947, § 55-217; Acts 1999, No. 1540, § 4.

9-11-218. Return of executed license to clerk — Effect on bond.

(a) Any person obtaining a license under the provisions of this act shall be required to return the license to the office of the clerk of the county court within sixty (60) days from the date of the license.

(b)(1) If the license is duly executed and officially signed by some person authorized by law to solemnize marriage in this state, the bond required by § 9-11-210 shall be deemed null and void.

(2) Otherwise, it shall remain in full force and effect.

History. Acts 1875, No. 127, § 6, p. 260; C. & M. Dig., § 7063; Pope's Dig., § 9045; A.S.A. 1947, § 55-224.

Meaning of "this act". See note to § 9-11-204.

Cross References. County offices defined, § 14-14-603.

Distribution of powers of county governments, § 14-14-502.

CASE NOTES**ANALYSIS**

Construction.

Marriage Upheld.

Construction.

Failure to comply with Arkansas's licensing statutes, as distinguished from the solemnization statutes, does not void an otherwise valid marriage. *Fryar v. Roberts*, 346 Ark. 432, 57 S.W.3d 727 (2001).

Marriage Upheld.

As a failure to do a ministerial act, i.e., to return a marriage license to the county clerk within 60 days of its issuance, could not render a marriage void, the parties had solemnized their marriage by a wedding ceremony, and the minister signed the marriage license, the trial court erred in ruling on summary judgment that the parties were not married. *Fryar v. Roberts*, 346 Ark. 432, 57 S.W.3d 727 (2001).

9-11-219. False return or record — Penalty.

If any person authorized to solemnize any marriage in this state shall willfully make a false return of any marriage or pretended marriage to the clerk and recorder, or if the clerk and recorder shall willfully make a false record of any return of a marriage license made to him or her, the offender shall be deemed guilty of a misdemeanor and on conviction shall be fined in any sum not less than one hundred dollars (\$100).

History. Rev. Stat., ch. 94, § 25; C. & M. Dig., § 7068; Pope's Dig., § 9050; A.S.A. 1947, § 55-225.

9-11-220. Duty of clerk on return of license — Issuance of certificate.

(a) Upon the return of any license officially signed as having been executed and that the parties therein named have been duly and according to law joined in marriage, the clerk issuing the license shall make a record thereof in the marriage record in his or her office.

(b) The clerk shall immediately make out a certificate of the record, giving the names, date, book, and page, together with the name of the

county and state, and attach the certificate to the license and return the license to the party presenting it.

(c) The certificate shall be sealed with the county seal.

(d) The circuit clerks in counties having two (2) judicial districts shall keep a record at the county site of each district in which marriage licenses shall be recorded.

(e)(1) If a license has been returned and recorded by the clerk that contains clerical or scrivener’s errors, the licensee may submit proof of the error to the circuit court in an ex parte proceeding.

(2) The court, upon a finding of error, shall order the county clerk to correct the errors on the license.

(3) The licensee shall not be charged a fee for filing a request to correct clerical or scrivener’s errors.

(f) On the face of the certificate shall appear the certification to the fact of marriage, including, if applicable, a designation that the parties entered into a covenant marriage signed by the parties to the marriage and the witnesses, and the signature and title of the officiant.

History. Acts 1875, No. 127, § 9, p. 260; 1901, No. 123, § 2, p. 194; C. & M. Dig., §§ 7059, 7067; Pope’s Dig., §§ 9041, 9049; A.S.A. 1947, §§ 55-226, 55-227; Acts 2001, No. 751, § 1; 2001, No. 1486, § 4; 2015, No. 1127, § 3.

Amendments. The 2015 amendment deleted “signed officially by the clerk and” preceding “sealed” in (c).

Cross References. County offices defined, § 14-14-603.

Covenant Marriage Act, § 9-11-801 et seq.

Distribution of powers of county governments, § 14-14-502.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

9-11-221. Certified copies of record as evidence.

The books of marriages and clerical credentials to be kept by the respective clerks and recorders and copies duly certified by the clerks and recorders shall be evidence in all the courts in this state.

History. Rev. Stat., ch. 94, § 24; C. & M. Dig., § 7055; Pope’s Dig., § 9035; A.S.A. 1947, § 55-230.

RESEARCH REFERENCES

Ark. L. Rev. The Best Evidence Rule — A Rule Requiring the Production of a Writing to Prove the Writing’s Contents, 14 Ark. L. Rev. 153.

Documentary Evidence —Arkansas, 15 Ark. L. Rev. 79.

CASE NOTES

Rebuttal.

The evidence of marriage may be rebutted by proving that any circumstances

rendered indispensably necessary by law to a valid marriage were wanting. *Goset v. Goset*, 112 Ark. 47, 164 S.W. 759 (1914).

SUBCHAPTER 3 — MARRIAGE CONTRACTS GENERALLY

SECTION.

9-11-301. Execution of contract.

9-11-302. Acknowledgment or proof.

9-11-303. Recordation — Effect.

SECTION.

9-11-304. Effect of unrecorded contract.

9-11-305. Contract or copy as evidence — Conclusiveness.

Publisher's Notes. This subchapter was probably superseded by Acts 1981, No. 548 (repealed), which was formerly codified as subchapter 4 of this chapter, as to antenuptial agreements made after July 1, 1981. This subchapter, however, would continue to apply to antenuptial agreements made prior to July 1, 1981.

Acts 1981, No. 548 was repealed and replaced by Acts 1987, No. 715, which now probably supersedes this subchapter and applies to premarital agreements executed on or after July 20, 1987.

Cross References. Promises made in consideration of marriage must be written, § 4-59-101.

RESEARCH REFERENCES

ALR. Parties' behavior during marriage as regarding contractual rights. 56 A.L.R.4th 998.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

Am. Jur. 41 Am. Jur. 2d, *Husb. & Wife*, § 81 et seq.

C.J.S. 41 C.J.S., *Husb. & Wife*, § 93 et seq.

CASE NOTES

Acknowledgment and Recordation.

Antenuptial contract neither recorded nor acknowledged was not invalid as between the parties and their privies and could be pleaded in bar of wife's claim of

homestead, dower and statutory allowances. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

Cited: *Galbreath, Stewart & Co. v. Cook*, 30 Ark. 417 (1875).

9-11-301. Execution of contract.

All marriage contracts whereby any estate, real or personal, is intended to be secured or conveyed to any person, or whereby the estate may be affected in law or equity, shall be in writing acknowledged by each of the contracting parties or proved by one (1) or more subscribing witnesses.

History. Rev. Stat., ch. 95, § 1; C. & M. Dig., § 7028; Pope's Dig., § 9008; A.S.A. 1947, § 55-301.

RESEARCH REFERENCES

ALR. Validity of Postnuptial Agreements in Contemplation of Spouse's Death. 87 A.L.R.6th 495.

Validity, Construction, and Enforcement of Oral Antenuptial Agreements. 15 A.L.R.7th Art. 2 (2015).

CASE NOTES

ANALYSIS

Burden of Proof.

Evidence.

Knowledge.

Partial Performance of Parol Agreement.

Burden of Proof.

Administrator of deceased husband's estate pleading antenuptial contract in bar to widow's claim of homestead, dower and statutory allowances had burden to prove that the contract had been knowingly entered into. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

Evidence.

Under this section, a postnuptial marriage settlement must be in writing and oral statements to the contrary fell short of establishing a binding property settlement. *Rush v. Smith*, 239 Ark. 874, 394 S.W.2d 613 (1965).

Knowledge.

Antenuptial contract signed by woman, without knowledge of its provisions, was

so unjust and unequitable as not to bar widow's claim. *Burnes v. Burnes*, 203 Ark. 334, 157 S.W.2d 24 (1942).

Evidence sufficient to prove antenuptial agreement was knowingly entered into by the wife without any fraud or misunderstanding. *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

Woman not permitted to excuse her allegedly unknowing entry into an antenuptial agreement by saying she was "in love." *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

Partial Performance of Parol Agreement.

A parol antenuptial agreement is not void but merely unenforceable; part performance subsequently acknowledged in writing rendered it enforceable. *Sims v. Roberts*, 188 Ark. 1030, 68 S.W.2d 1001 (1934).

9-11-302. Acknowledgment or proof.

Marriage contracts shall be acknowledged or proven before a court of record, before some judge or clerk of a court of record, or before any former judge of a court of record who served at least four (4) years, of the state in which the contract is made and executed, which acknowledgment or proof shall be taken and certified in the same manner as deeds of conveyance for lands are or shall be required by law to be acknowledged or proven.

History. Rev. Stat., ch. 95, § 2; C. & M. Dig., § 7029; Pope's Dig., § 9009; Acts 1983, No. 850, § 2; A.S.A. 1947, § 55-302.

CASE NOTES

Cited: *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

9-11-303. Recordation — Effect.

(a) Every marriage contract whereby any real estate is conveyed or secured shall be recorded with the certificate of proof or acknowledgment in the office of the clerk and recorder of every county in which any estate intended to be affected or conveyed shall be situated.

(b) When a marriage contract is deposited with the recorder of any county for record, it shall be deemed full notice to all persons of the contents thereof, as far as relates to real estate affected thereby in the county where it is deposited.

History. Rev. Stat., ch. 95, §§ 3, 4; C. & M. Dig., §§ 7030, 7031; Pope's Dig., §§ 9010, 9011; A.S.A. 1947, §§ 55-303, 55-304.

CASE NOTES

Cited: *Babb v. Babb*, 270 Ark. 289, 604 S.W.2d 574 (Ct. App. 1980).

9-11-304. Effect of unrecorded contract.

No marriage contract shall be valid or affect property, except between the parties thereto and those who have actual notice thereof, until it shall be deposited for record with the clerk and recorder of the county where the real estate is situated.

History. Rev. Stat., ch. 95, § 5; C. & M. Dig., § 7032; Pope's Dig., § 9012; A.S.A. 1947, § 55-305.

CASE NOTES**Validity Between Parties.**

Failure to record acknowledged antenuptial agreement did not affect its valid-

ity as between the parties and their privies. *Davis v. Davis*, 196 Ark. 57, 116 S.W.2d 607 (1938).

9-11-305. Contract or copy as evidence — Conclusiveness.

(a) Marriage contracts duly proved or acknowledged, certified, or recorded shall be received as evidence in any court of record of this state, without further proof of their execution.

(b) When it shall appear to a court that any marriage contract duly acknowledged or proved and recorded is lost or is not in the power of the party wishing to use it, a copy duly certified under the hand and seal of the clerk and recorder may be received in evidence.

(c) Neither the certificate of acknowledgment nor probate of any marriage contract, nor the record or transcript thereof, shall be conclusive, but may be rebutted.

History. Rev. Stat., ch. 95, §§ 6-8; C. & M. Dig., §§ 7033-7035; Pope's Dig., §§ 9013-9015; A.S.A. 1947, §§ 55-306 — 55-308.

RESEARCH REFERENCES

Ark. L. Rev. Documentary Evidence — Arkansas, 15 Ark. L. Rev. 79.

SUBCHAPTER 4 — ARKANSAS PREMARITAL AGREEMENT ACT

SECTION.
9-11-401. Definitions.
9-11-402. Formalities — Definition.
9-11-403. Content.
9-11-404. Effect of marriage.
9-11-405. Amendment or revocation.
9-11-406. Enforcement.
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SECTION.
9-11-408. Limitations of actions.
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9-11-410. Short title.
9-11-411. Severability.
9-11-412. Time of taking effect.
9-11-413. Repeal.

Publisher’s Notes. Former subchapter 4, concerning antenuptial contracts or settlements, was repealed by Acts 1987, No. 715, § 13. The former subchapter was derived from the following sources:
9-11-401. Acts 1981, No. 548, § 6; A.S.A. 1947, § 55-314.
9-11-402. Acts 1981, No. 548, § 1; A.S.A. 1947, § 55-309.
9-11-403. Acts 1981, No. 548, § 2; A.S.A. 1947, § 55-310.

9-11-404. Acts 1981, No. 548, § 1; A.S.A. 1947, § 55-309.
9-11-405. Acts 1981, No. 548, § 3; A.S.A. 1947, § 55-311.
9-11-406. Acts 1981, No. 548, § 4; A.S.A. 1947, § 55-312.
9-11-407. Acts 1981, No. 548, § 5; A.S.A. 1947, § 55-313.

RESEARCH REFERENCES

ALR. Modern status of views as to validity of premarital agreements contemplating divorce or separation. 53 A.L.R.4th 22.
Enforceability of premarital agreements governing support or property rights upon divorce or separation as affected by circumstances surrounding execution. 53 A.L.R.4th 85.
Enforceability of premarital agreements governing support or property rights upon divorce or separation as affected by fairness or adequacy of those terms. 53 A.L.R.4th 161.
Parties’ behavior during marriage as regarding contractual rights. 56 A.L.R.4th 998.
Failure to disclose extent or value of property owned as ground for avoiding premarital contract. 3 A.L.R.5th 394.
Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

Construction and Application of Uniform Premarital Agreement Act of 1983. 33 A.L.R.7th Art. 2 (2018).
Am. Jur. 41 Am. Jur. 2d, *Husb. & Wife*, § 81 et seq.
Ark. L. Rev. Maria Korzendorfer, Case Note: In re Estate of Thompson: The Shortcomings of the Arkansas Elective Share Statute, 68 Ark. L. Rev. 1089 (2016).
C.J.S. 41 C.J.S., *Husb. & W.*, § 93 et seq.
U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.
U. Ark. Little Rock L. Rev. Lucy L. Holifield, Note: Property Law—Upending the Familiar Tools of Estate Planning: Equity Renders Revocable Trusts Subject to the Arkansas Spousal Election. In re Estate of Thompson, 38 U. Ark. Little Rock L. Rev. 75 (2015).

9-11-401. Definitions.

(1) “Premarital agreement” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) “Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

History. Acts 1987, No. 715, § 1.

CASE NOTES**In General.**

Parties contemplating marriage may, by agreement, fix the rights of each in the property of the other differently than established by law; such agreements must be made in contemplation of the marriage lasting until death, rather than in contemplation of divorce. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

An agreement that is not solely intended to be operative upon divorce is not void merely because it mentions or is operative upon divorce, among other contingencies. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

9-11-402. Formalities — Definition.

(a) A premarital agreement must be in writing and signed and acknowledged by both parties. It is enforceable without consideration.

(b) As used in this section, “acknowledged” means:

(1) A formal declaration or admission before an authorized public officer by the parties who execute the premarital agreement providing that the premarital agreement is the act and deed of the parties;

(2) A sworn affirmation by the respective attorneys of each party that the party represented by the attorney understands and consents to the legal effect of the premarital agreement;

(3) An agreement signed by the parties that is witnessed by a notary and includes a statement that the parties:

(A) Have consulted with their respective attorneys regarding the premarital agreement;

(B) Have read and understand the premarital agreement; and

(C) Freely entered into the premarital agreement without coercion or undue influence; or

(4) An execution of the premarital agreement by both parties that is witnessed by two (2) individuals who are disinterested parties to the premarital agreement.

History. Acts 1987, No. 715, § 2; 2017, No. 654, § 2.

A.C.R.C. Notes. Acts 2017, No. 654, § 1, provided: “Legislative findings. The General Assembly finds that:

“(1) Arkansas Code § 9-11-402 requires a premarital agreement to be in

writing, signed, and acknowledged by both parties to the agreement;

“(2) In *Lyle Farms P’ship et al. v. Lyle*, 2016 Ark. App. 577 (2001), the Arkansas Court of Appeals defined ‘acknowledged’ in terms of the requirements necessary to satisfy an acknowledgement;

“(3) An ‘acknowledgement’ is a formal declaration before a notary that an instrument is the act and deed of the declarant; and

“(4) As parties are able to acknowledge their intent to be bound in numerous

ways, the term ‘acknowledge’ should be defined in order to clarify the requirements of Arkansas Code § 9-11-402.”

Amendments. The 2017 amendment added (b) and redesignated the existing language as (a).

CASE NOTES

Acknowledgement.

Trial court properly granted a wife summary judgment on her declaratory judgment action seeking to have a prenuptial agreement declared null and void where the parties to the agreement did not include an acknowledgement as required by

this section, and the inclusion of the word “acknowledge” in the body of the agreement and notary signature and seal were not the equivalent of an acknowledgement. *Lyle Farms P’ship v. Lyle*, 2016 Ark. App. 577, 507 S.W.3d 519 (2016) (decision under prior law).

9-11-403. Content.

- (a) Parties to a premarital agreement may contract with respect to:
 - (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
 - (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
 - (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
 - (4) the modification or elimination of spousal support;
 - (5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
 - (6) the ownership rights in and disposition of the death benefit from a life insurance policy;
 - (7) the choice of law governing the construction of the agreement; and
 - (8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.
- (b) The right of a child to support may not be adversely affected by a premarital agreement.

History. Acts 1987, No. 715, § 3.

CASE NOTES

Marital Home.

Awarding the wife possession of the marital home was error where a valid and enforceable premarital agreement clearly contemplated that in the event of divorce,

any property held by the parties as tenants in common, such as the marital home, had to be sold and the proceeds divided equally. *Woods v. Woods*, 2020 Ark. App. 469 (2020).

9-11-404. Effect of marriage.

A premarital agreement becomes effective upon marriage.

History. Acts 1987, No. 715, § 4.

9-11-405. Amendment or revocation.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

History. Acts 1987, No. 715, § 5.

9-11-406. Enforcement.

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive after consulting with legal counsel, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one (1) party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

History. Acts 1987, No. 715, § 6.

RESEARCH REFERENCES

ALR. Validity of Postnuptial Agreements in Contemplation of Spouse's Death. 87 A.L.R.6th 495.

CASE NOTES

ANALYSIS

Applicability.

Classification of Property.

Disclosure.

Failure to Read Agreement.

Legal Malpractice.

Present Value.

Presumption of Concealment.

Unconscionability.

Applicability.

This section does not apply to a postnuptial agreement and, thus, such an agreement was upheld as valid under contract elements where both parties waived and released any rights as a surviving spouse to elect to take against the other's will or to have any interest in the property of the deceased spouse. *Stewart v. Combs*, 368 Ark. 121, 243 S.W.3d 294 (2006).

Classification of Property.

Where the agreement clearly stated that property acquired subsequent to the marriage shall be owned jointly, with each party entitled to one-half ownership in any such property, the fact that the husband bought property with his own money did not make that property his separate property. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

Disclosure.

Circuit court clearly erred in invalidating the premarital agreement under subdivision (a)(2) of this section and in finding that the wife had not received a fair and reasonable disclosure of the husband's assets where the exhibits attached to the agreement showed his approximate net worth and listed his personal and real property, as well as various investment accounts. *Branch v. Branch*, 2016 Ark. App. 613, 508 S.W.3d 911 (2016).

Failure to Read Agreement.

Wife's failure to read the proposed agreement before she signed it did not excuse her from its consequences. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

Trial court did not clearly err in finding that the decedent's wife had voluntarily signed a premarital agreement; the trial court put the responsibility on the wife, a college-educated adult, for any alleged

failure to read or comprehend the agreement as a choice made at her own peril. *Mays v. Mullins*, 2018 Ark. App. 200, 547 S.W.3d 474 (2018).

Legal Malpractice.

When the client sued the attorney in connection with the execution of a prenuptial agreement, her complaint was barred by the three-year statute of limitations for legal-malpractice claims under § 16-56-105; there was no written contract to bring the action under the five-year statute of limitations set forth in § 16-56-111. While the prenuptial agreement contained a certification that the document was not enforceable under this section if the party did not voluntarily and expressly waive further disclosures after consulting with legal counsel, this writing did not convey written obligations upon the attorney. *Pounders v. Reif*, 2009 Ark. 581 (2009).

Present Value.

The chancellor's finding of the total present value of all property acquired subsequent to the marriage was clearly against the preponderance of the evidence, where he failed to consider all property acquired subsequent to the marriage. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

Presumption of Concealment.

Where the provisions for the wife are disproportionate to the means of the husband, a presumption arises that there has been a designed concealment, and such presumption places a burden on the husband to show by a preponderance of the evidence that the wife had knowledge of the character and extent of his assets, or ought to have had such knowledge at the time the agreement was signed. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

The presumption was overcome by proof that the husband made available to the wife a complete list of his assets, the value thereof, and his estimated net worth; there was evidence that, before the marriage, she had been on his farm; and she admitted that no pressure had been applied to force her to sign the agreement. *Lee v. Lee*, 35 Ark. App. 192, 816 S.W.2d 625 (1991).

Unconscionability.

Trial court did not err in concluding that the premarital agreement was not unconscionable where the parties had equal bargaining power, and the agree-

ment disclosed the decedent's premarital real estate with particularity. *Mays v. Mullins*, 2018 Ark. App. 200, 547 S.W.3d 474 (2018).

9-11-407. Enforcement — Void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

History. Acts 1987, No. 715, § 7.

9-11-408. Limitations of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

History. Acts 1987, No. 715, § 8.

9-11-409. Application and construction.

This subchapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History. Acts 1987, No. 715, § 9.

A.C.R.C. Notes. The reference to "this

act among states enacting it" refers to the Uniform Premarital Agreement Act.

9-11-410. Short title.

This subchapter may be cited as the "Arkansas Premarital Agreement Act".

History. Acts 1987, No. 715, § 10.

9-11-411. Severability.

If any provision of this subchapter or its application to any person or circumstance be held invalid, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

History. Acts 1987, No. 715, § 11.

9-11-412. Time of taking effect.

This subchapter takes effect July 20, 1987, and applies to any premarital agreement executed on or after that date.

History. Acts 1987, No. 715, § 12.

A.C.R.C. Notes. As enacted, this section provided for an effective date of July 1, 1987. However, since the act contained no emergency clause, such effective date would be invalid under Arkansas case law (see *State ex rel. Arkansas Tax Com. v.*

Moore, 103 Ark. 48, 145 S.W. 199 (1912) and related cases). Consequently, the general effective date for 1987 legislation was substituted in this section by the Arkansas Code Revision Commission pursuant to its authority under § 1-2-303.

9-11-413. Repeal.

The following acts and parts of acts are repealed:

(a) Acts 1981, No. 548.

(b) All laws and parts of laws in conflict with this subchapter.

History. Acts 1987, No. 715, § 13.

SUBCHAPTER 5 — RIGHTS AND PROPERTY OF MARRIED PERSONS

SECTION.

9-11-501. Construction of this section and §§ 9-11-509 — 9-11-514.

9-11-502. [Repealed.]

9-11-503. Rights generally.

9-11-504. [Repealed.]

9-11-505. Control of separate real and personal property.

9-11-506. Spouses not liable for each other's antenuptial debts.

9-11-507. Separate property of one spouse not liable for other spouse's debts.

9-11-508. Contracts concerning separate property of one spouse not binding on other spouse.

9-11-509. Schedule of separate personal property — Filing — Effect.

SECTION.

9-11-510. Form of schedule.

9-11-511. Filing of schedule by person selling or giving property — Effect of recording conveyance or will.

9-11-512. Effect of failure to file schedule.

9-11-513. Control of one spouse's separate property by other spouse — Presumption of agency or trusteeship.

9-11-514. Settlements in equity.

9-11-515. [Repealed.]

9-11-516. Doctrine of necessities — Abolished.

Cross References. Deeds between spouses, § 18-12-401.

Effective Dates. Acts 1873, No. 126, § 12: effective on passage.

Acts 1899, No. 5, § 2: effective on passage.

RESEARCH REFERENCES

ALR. Deed to persons described as husband and wife but not legally married. 9 A.L.R.4th 1189.

Prior institution of annulment proceed-

ings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse. 31 A.L.R.4th 1190.

Validity and effect of one spouse's conveyance to the other spouse of interest in property held as estate by entireties. 18 A.L.R.5th 230.

Property rights arising from relationship of couple cohabiting without marriage. 69 A.L.R.5th 219.

Am. Jur. 41 Am. Jur. 2d, *Husb. & Wife*, § 11 et seq.

Ark. L. Rev. *Personal Property — Ownership of Wedding Gifts*, 8 Ark. L. Rev. 184.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

Family Torts in Automobile Cases, 13 Ark. L. Rev. 299.

Torts and the Family — Areas of Liability, 14 Ark. L. Rev. 92.

Torts — Assault and Battery — Liability of One Who Aids and Abets Where Principal Assailant Not Liable, 15 Ark. L. Rev. 201.

Res Judicata — Privity Between Husband and Wife, 18 Ark. L. Rev. 103.

Note, Imputed Negligence Under the Arkansas Comparative Liability Statute, Exception: Stull, Adm'x v. Ragsdale, 35 Ark. L. Rev. 722.

Note, Attwood v. Estate of Attwood: A Partial Abrogation of the Parental Immunity Doctrine, 36 Ark. L. Rev. 451.

C.J.S. 41 C.J.S., *Husb. & Wife*, § 3 et seq.

U. Ark. Little Rock L.J. *Note, Torts — Negligence — Contributory Negligence of One Parent Is Imputed to the Other to Diminish the Latter's Recovery for the Death of a Minor Child (Stull v. Ragsdale)*. 5 U. Ark. Little Rock L.J. 289.

Harris, The Arkansas Marital Property Statute and the Arkansas Appellate Courts: Tiptoeing Together Through the Tulips, 7 U. Ark. Little Rock L.J. 1.

9-11-501. Construction of this section and §§ 9-11-509 — 9-11-514.

The rule that statutes in derogation of the common law shall be strictly construed shall have no application to this section and §§ 9-11-509 — 9-11-514.

History. Acts 1875 (Adj. Sess.), No. 91, § 6, p. 172; C. & M. Dig., § 5596; Pope's Dig., § 7246; Acts 1981, No. 873, § 11; A.S.A. 1947, § 55-414.

CASE NOTES

Cited: *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).

9-11-502. [Repealed.]

Publisher's Notes. This section, concerning removal of disabilities of married women, was repealed by Acts 2013, No. 1152, § 5. The section was derived from

Acts 1915, No. 159, § 1; 1919, No. 66, § 1; C. & M. Dig., § 5577; Pope's Dig., § 7227; A.S.A. 1947, § 55-401.

9-11-503. Rights generally.

(a) A married person may bargain, sell, assign, and transfer his or her separate personal property, carry on any trade or business, and perform any labor or services on his or her sole and separate account.

(b) The earnings of any married person from the trade, business, labor, or services shall be his or her sole and separate property and may be used or invested in the person's own name.

(c) He or she may sue alone or be sued in the courts of this state on account of the property, business, or services.

History. Acts 1873, No. 126, § 3, p. § 7231; Acts 1981, No. 873, § 1; A.S.A. 382; C. & M. Dig., § 5581; Pope's Dig., 1947, § 55-402.

CASE NOTES

ANALYSIS

In General.

Conduct of Business.

Contracts.

Partnership.

Suit Against Married Woman.

In General.

This section removed the common law disability of coverture, and repealed the saving clause in statute of limitations in a woman's favor. *Hershy v. Latham*, 42 Ark. 305 (1883); *Batte v. McCaa*, 44 Ark. 398 (1884); *McGaughey v. Brown*, 46 Ark. 25 (1885); *Garland County v. Gaines*, 47 Ark. 558, 2 S.W. 460 (1886).

Conduct of Business.

This section empowers a woman to become something more than a trader in the commercial sense. The primary significance of "business" is employment and includes farming. *Hickey v. Thompson*, 52 Ark. 234, 12 S.W. 475 (1889).

This section confers the right to conduct business in the way and by the means usually employed in carrying on business. *Cooper v. Burel*, 129 Ark. 261, 195 S.W. 356 (1917).

Contracts.

Husband and wife could not, by this section, contract between themselves. *Spurlock v. Spurlock*, 80 Ark. 37, 96 S.W. 753 (1906).

Obligations between husband and wife incurred before marriage were not extin-

guished by the marriage. *McKie v. McKie*, 116 Ark. 68, 172 S.W. 891 (1914).

Clearly, the law in Arkansas provides that a married person can contract in his or her own right; he or she can sue or be sued in his or her own right. *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).

Partnership.

Wife may form a partnership in trade with any one, except her husband, and as to her separate estate, will be bound by all the contracts of the firm and to the same extent as if she were not married. *Abbott v. Jackson*, 43 Ark. 212 (1884).

Under this section wife could not form a partnership with her husband. *Gilkerson-Sloss Comm'n Co. v. Salinger*, 56 Ark. 294, 19 S.W. 747 (1892).

Suit Against Married Woman.

The husband need not be joined in a suit against the wife. *Ark. Stables v. Samstag*, 78 Ark. 517, 78 Ark. 517, 94 S.W. 699 (1906); *Alphin v. Wade*, 89 Ark. 354, 116 S.W. 667 (1909).

The burden of proof in an action seeking to enforce liability against a married woman is upon the plaintiff to show that the contract was one which she had the power to make. *Hardin v. Jessie*, 103 Ark. 246, 146 S.W. 499 (1912).

This section did not mean that in every instance a married woman must be sued alone. *Williamson v. O'Dwyer & Ahern Co.*, 127 Ark. 530, 192 S.W. 899 (1917).

9-11-504. [Repealed.]

Publisher's Notes. This section, concerning authority to make executory contracts and power of attorney, was repealed by Acts 2013, No. 1152, § 6. The section

was derived from Acts 1895, No. 47, § 1, p. 58; Pope's Dig., § 7226; A.S.A. 1947, § 55-405.

9-11-505. Control of separate real and personal property.

(a) The real and personal property that any married person now owns, or has had conveyed to him or her by any person in good faith and without prejudice to existing creditors, that is acquired as sole and separate property, that comes to him or her by gift, bequest, descent, grant, or conveyance from any person, that he or she has acquired by trade, business, labor, or services carried on or performed on his or her sole or separate account, that a married person in this state holds or owns at the time of the marriage, and the rents, issues, and proceeds of all such property shall, notwithstanding the marriage, be and remain his or her sole and separate property.

(b) The separate property may be used, collected, and invested by him or her, in his or her own name, and shall not be subject to the interference or control of his or her spouse nor shall it be liable for the spouse's debts, except as may have been contracted for the support of the spouse, or support of the children of the marriage by the spouse or his or her agent.

History. Acts 1873, No. 126, § 2, p. 382; C. & M. Dig., § 5580; Pope's Dig., § 7230; Acts 1981, No. 873, § 2; A.S.A. 1947, § 55-404.

Cross References. Property of femme covert, Ark. Const., Art. 9, § 7.

CASE NOTES**ANALYSIS**

Construction with Other Law.
Conveyance.
Curtesy.
Liability for Debts.

Construction with Other Law.

Where decedent and his surviving spouse were married for only four years, the trial court did not clearly err in finding that the transfer-on-death (TOD) account was the sole and separate property of decedent's three children by a prior marriage as the named beneficiaries of the TOD account; the funds used to purchase the account were gained as the result of the sale of decedent's business, which he acquired before his marriage to the surviving spouse and continued to hold as his separate property during the course of the marriage, and the surviving spouse admittedly had no ownership interest in the business, nor was their commingling of any funds between the surviving spouse and the decedent once they were married. *Ginsburg v. Ginsburg*, 359 Ark. 226, 195 S.W.3d 898 (2004).

Conveyance.

A wife may convey her separate estate as a femme sole and even though conveyance is without acknowledgment it would be valid between the parties. *Johnson v. Graham Bros. Co.*, 98 Ark. 274, 135 S.W. 853 (1911).

Curtesy.

If a woman makes no disposal of her separate property and there is issue born alive of the marriage, at her death husband's right of curtesy attaches as at common law. *Neely v. Lancaster*, 47 Ark. 175, 1 S.W. 66 (1886). See also *Percy v. Cockrill*, 53 F. 872 (8th Cir. 1893); *McGuire v. Cook*, 98 Ark. 118, 135 S.W. 840 (1911).

Husband's right of curtesy is superior to claim of wife's creditors. *Hampton v. Cook*, 64 Ark. 353, 42 S.W. 535 (1897).

Liability for Debts.

The contracts of a married woman will not be enforced against her separate estate, unless they are made in reference thereto, or for her personal benefit. *Stillwell v. Adams*, 29 Ark. 346 (1874).

If the obligation is for improvement or preservation of the wife's estate, it will be

implied that her property is liable for the debt. *Henry v. Blackburn*, 32 Ark. 445 (1877).

A married woman may contract for improvements upon her separate property and such a contract become the basis of a mechanic's lien for labor and materials. *Hoffman v. McFadden*, 56 Ark. 217, 19 S.W. 753 (1892).

Where husband was unable to pay on contract secured by a note executed by husband and wife to secure payment, the note was a valid obligation of the wife so far as it was for the benefit of her separate estate. *Crenshaw v. Collier*, 70 Ark. 5, 65 S.W. 709 (1901).

9-11-506. Spouses not liable for each other's antenuptial debts.

In all marriages solemnized after February 1, 1899, neither spouse shall be held to be liable for the antenuptial debts of the other, except by virtue of an express written contract.

History. Acts 1899, No. 5, § 1, p. 4; C. Acts 1981, No. 873, § 5; A.S.A. 1947, & M. Dig., § 5590; Pope's Dig., § 7240; § 55-408.

CASE NOTES

Cited: *Fitzpatrick v. Owens*, 124 Ark. 167, 186 S.W. 832 (1916).

9-11-507. Separate property of one spouse not liable for other spouse's debts.

The property of any male or female, whether real or personal, and whether acquired before or after marriage in that person's own right, shall not be sold to pay the debts of a spouse contracted for or damages incurred by the spouse before marriage.

History. Rev. Stat., ch. 60, § 22; C. & M. Dig., § 5589; Pope's Dig., § 7239; Acts 1981, No. 873, § 4; A.S.A. 1947, § 55-406.

CASE NOTES

Cited: *Allen v. Hanks*, 136 U.S. 300, 10 S. Ct. 961, 34 L. Ed. 414 (1890).

9-11-508. Contracts concerning separate property of one spouse not binding on other spouse.

No bargain or contract made by any married person, in respect to his or her sole and separate property or any property that may come to him or her by descent, devise, bequest, purchase, or gift or grant of any person, and no bargain or contract entered into by any married person, in or about the carrying on of any trade or business, under any statute of the state, shall be binding upon his or her spouse or render his or her person or property in any way liable therefor.

History. Acts 1873, No. 126, § 4, p. § 7232; Acts 1981, No. 873, § 3; A.S.A. 382; C. & M. Dig., § 5582; Pope's Dig., 1947, § 55-407.

CASE NOTES

Divorce.

This section does not control on the issue of marital debt associated with division of property in a divorce case. *Hunt v. Hunt*, 341 Ark. 173, 15 S.W.3d 334 (2000).

Cited: *Mattar Bros. v. Wathen*, 99 Ark. 329, 138 S.W. 455 (1911); *Medlock v. Fort Smith Serv. Fin. Corp.*, 304 Ark. 652, 803 S.W.2d 930 (1991).

9-11-509. Schedule of separate personal property — Filing — Effect.

(a) A married person owning any separate personal property may make a schedule of the property and file it in the recorder's office of the county where he or she then lives.

(b) The schedule so filed, or a duly certified copy thereof, under the hand and seal of the recorder, shall be prima facie evidence, in all courts and places, that the property mentioned in the schedule, together with the issues and increases of the property, is, and was at the date of the making of the schedule, the separate property of the married person.

History. Acts 1875 (Adj. Sess.), No. 91, § 1, p. 172; C. & M. Dig., § 5591; Pope's Dig., § 7241; Acts 1981, No. 873, § 6; A.S.A. 1947, § 55-409.

Cross References. Scheduling separate personal property of married women, Ark. Const., Art. 9, § 8.

CASE NOTES

ANALYSIS

Purpose.
Exchanged Property.
Femme Sole.
Money.

Purpose.

Failure to file a schedule will not enlarge the common law estate of a husband in his wife's property. The object of the statute was to increase the wife's rights and at the same time protect her husband's creditors. *Coquard v. Pearce*, 68 Ark. 93, 56 S.W. 641 (1900).

Exchanged Property.

Property for which scheduled property has been exchanged is not protected by

the schedule. *Berlin v. Cantrell*, 33 Ark. 611 (1878).

Femme Sole.

Schedules can only be filed by a married woman, and a schedule filed by a femme sole will not avail upon her subsequent marriage. *Berlin v. Cantrell*, 33 Ark. 611 (1878).

Money.

A married woman is not required to schedule her money. *German Bank v. Himstedt*, 42 Ark. 62 (1883).

Cited: Taylor v. De Lapp, 181 Ark. 1147, 24 S.W.2d 862 (1930).

9-11-510. Form of schedule.

That schedule of a married person's separate property may be in the following form:

"STATE OF ARKANSAS)
)
COUNTY OF)

Be it known that I,, (Wife) (Husband) of of the County and State aforesaid, own in my own right the property below described, which I hereby schedule as my separate property, to-wit:

(listing of property)

Witness my hand this day of, 20

SIGNATURE”.

History. Acts 1875 (Adj. Sess.), No. 91, Dig., § 7247; Acts 1981, No. 873, § 12; § 7, p. 172; C. & M. Dig., § 5597; Pope’s A.S.A. 1947, § 55-415.

9-11-511. Filing of schedule by person selling or giving property — Effect of recording conveyance or will.

(a) Any persons who shall bona fide sell or give any property to a married person may schedule and record the sale or gift as the separate property of the married person, with the same and like effect as though the scheduling and recording had been done by the married person.

(b) Any conveyance or will of property to a married person, on being duly recorded, shall have all the effect of a schedule under this section and §§ 9-11-501, 9-11-509, 9-11-510, and 9-11-512 — 9-11-514.

History. Acts 1875 (Adj. Sess.), No. 91, Dig., § 7242; Acts 1981, No. 873, § 7; § 2, p. 172; C. & M. Dig., § 5592; Pope’s A.S.A. 1947, § 55-410.

CASE NOTES

Cited: Wallace v. Watson, 140 Ark. 430, 215 S.W. 892 (1919).

9-11-512. Effect of failure to file schedule.

The separate estate and property of a married person shall not be forfeited nor shall any rights and title thereto be prejudiced by a failure or neglect to file a schedule. However, in any suit, action, or proceeding relating to the property when the property has not been scheduled and recorded the burden of proof shall rest upon the married person to show the property is his or her separate property.

History. Acts 1875 (Adj. Sess.), No. 91, Dig., § 7243; Acts 1981, No. 873, § 8; § 3, p. 172; C. & M. Dig., § 5593; Pope’s A.S.A. 1947, § 55-411.

9-11-513. Control of one spouse’s separate property by other spouse — Presumption of agency or trusteeship.

The fact that a married person permits his or her spouse to have the custody, control, and management of separate property shall not of itself be sufficient evidence that the married person has relinquished title to the property. However, the presumption shall be that the spouse is acting as the agent or trustee of the other. This presumption may be rebutted by any evidence establishing a sale or gift of the property to the other spouse.

History. Acts 1875 (Adj. Sess.), No. 91, § 4, p. 172; C. & M. Dig., § 5594; Pope's Dig., § 7244; Acts 1981, No. 873, § 9; A.S.A. 1947, § 55-412.

CASE NOTES

ANALYSIS

Burden of Proof.

Presumption.

Rebutting Evidence.

Burden of Proof.

The burden is upon the husband to repel the presumption even though property paid for by the wife is taken in the husband's name. *Gilbert v. Gilbert*, 180 Ark. 596, 22 S.W.2d 32 (1929).

Presumption.

Evidence sufficient to support presumption that husband acted as the agent of the wife. *Priddy v. Wood*, 245 Ark. 209, 431 S.W.2d 744 (1968).

Rebutting Evidence.

This section does not require that the rebutting evidence should show a formal gift, it being sufficient if the proof shows that the wife's property was used by the husband in such manner as to preclude the idea that she expected him to account to her as her agent or trustee. *Wyatt v. Scott*, 84 Ark. 355, 105 S.W. 871 (1907).

Evidence sufficient to rebut presumption that husband acted as wife's agent. *Jones v. Seward*, 265 Ark. 225, 578 S.W.2d 16 (1979).

Cited: *Fletcher v. Dunn*, 188 Ark. 734, 67 S.W.2d 579 (1934).

9-11-514. Settlements in equity.

This section and §§ 9-11-501 and 9-11-509 — 9-11-513 shall not be construed to abridge the existing jurisdiction and powers of a court of equity to make a settlement upon a spouse out of his or her separate estate and property and otherwise protect his or her separate property rights. Such jurisdiction is extended to securing to each spouse his or her separate property as required by law.

History. Acts 1875 (Adj. Sess.), No. 91, § 5, p. 172; C. & M. Dig., § 5595; Pope's Dig., § 7245; Acts 1981, No. 873, § 10; A.S.A. 1947, § 55-413.

9-11-515. [Repealed.]

Publisher's Notes. This section, concerning reformation of deeds, was repealed by Acts 2013, No. 1152, § 7. The section was derived from Acts 1893, No. 21, § 2, p. 38; C. & M. Dig., § 5578; Pope's Dig., § 7228; A.S.A. 1947, § 55-403.

9-11-516. Doctrine of necessities — Abolished.

(a)(1) Absent express authority, neither a husband nor a wife is liable for the other's debt obligations, including those for necessities.

(2) As used in this section, "necessaries" means all such things required for the sustenance of a person, including food, clothing, medicine, and habitation.

(b) The doctrine of necessities, as it is known in the common law, is hereby abolished.

History. Acts 2011, No. 1183, § 1.

SUBCHAPTER 6 — RIGHTS IN REAL ESTATE OF INSANE SPOUSE

SECTION.

9-11-601. Obligations to support spouse unaffected by subchapter.

9-11-602. Sale of real estate free of dower or curtesy — Petition.

9-11-603. Sale of real estate free of dower or curtesy — Order and deposit.

SECTION.

9-11-604. Setting apart dower or curtesy as life estate in certain lands.

Effective Dates. Acts 1905, No. 337, § 6: effective on passage.

Acts 1907, No. 393, § 4: effective on passage.

Acts 1923, No. 472, § 2: Mar. 20, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage."

Acts 1981, No. 714, § 75: Mar. 25, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that existing law relating to such matters as homestead, dower, curtesy, statutory allowances pay-

able from a decedent's estate, and the right of a surviving spouse to take against the will of a decedent, do not in all circumstances provide for equal treatment between the sexes, that the constitutionality of such existing law has been drawn into question by decisions of the United States Supreme Court and the Arkansas Supreme Court, and that there is an urgent need to insure that the law provides equality in the property rights and interests of married persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

9-11-601. Obligations to support spouse unaffected by subchapter.

Nothing in this subchapter shall be construed to release the plaintiff from any legal obligation the plaintiff may be under to support the defendant out of the plaintiff's estate, the same as if this subchapter had not been enacted.

History. Acts 1905, No. 337, § 4, p. § 4450; Acts 1981, No. 714, § 12; A.S.A. 794; C. & M. Dig., § 3564; Pope's Dig., 1947, § 59-704.

9-11-602. Sale of real estate free of dower or curtesy — Petition.

(a)(1) Any person owning lands in this state and whose spouse is adjudged insane may apply by petition to the circuit court of the county where the lands are situated for leave to sell the real estate, or any part thereof, discharged and unencumbered of the rights of dower or curtesy of the spouse.

(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, the nature and object of the conveyance desired to be made, describing the real estate and giving the name of

the person to whom the conveyance is intended to be made, and the consideration thereof, and that the intention of the conveyance is not to deprive the spouse of dower or curtesy, as the case may be, but to dispose of the real estate in the usual and ordinary course of business.

(b) On the filing of the petition, the court shall appoint some reliable and disinterested citizen not related to either of the parties, nor interested directly or indirectly in the real estate or any part thereof described in the petition as guardian ad litem for the defendant. The guardian ad litem shall forthwith cause the appearance of the defendant to be entered of record in the case from time to time and make such pleadings in the case as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on the defendant.

History. Acts 1905, No. 337, § 1, p. § 4447; Acts 1981, No. 714, § 10; A.S.A. 794; C. & M. Dig., § 3561; Pope's Dig., 1947, § 59-701.

9-11-603. Sale of real estate free of dower or curtesy — Order and deposit.

(a) Upon the hearing of the petition, if the court deems it to be in the best interest of the parties that the land be sold, it may make an order that the plaintiff may sell the land free and discharged and unencumbered of the right of dower or curtesy, as the case may be.

(b) In every such order, the court shall adjudge as part of the order that before the sale shall become effective, the petitioner or his or her grantee shall deposit into the registry of the court, in cash, one-third ($\frac{1}{3}$) of the purchase price of the lands to be disposed of as provided in this section. In all such sales, the sale shall be reported to the circuit court and the sale approved thereby.

(c)(1) The deposit of one-third ($\frac{1}{3}$) of the purchase price of the land shall be held in trust by the clerk of the court and loaned out by him or her under the order of the court from time to time at the highest obtainable rate of interest, upon security to be approved by the court or judge in vacation. The clerk shall be responsible therefor on his or her official bond.

(2) The interest on the money shall be paid over annually to the plaintiff. However, the court may make, upon application, of which the plaintiff shall be notified, and on reasonable showing, reasonable allowance out of the interest from time to time for the support of the defendant.

(d)(1) Should the insane defendant be survived by the plaintiff, the deposit shall be paid over to the plaintiff upon the plaintiff's application to the court. If the plaintiff survives the defendant but dies before an order of the court is actually made to pay the moneys over to the plaintiff, then the moneys shall descend to the plaintiff's heirs at law as realty and shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.

(2) In the event that the plaintiff is survived by the defendant, the interest accruing on the deposit shall be paid over to the defendant only during the defendant's natural life. At the defendant's death the deposit shall descend to the heirs at law of the plaintiff as realty and shall be paid over to the plaintiff's heirs or legal representatives according to law or the lawful order of the circuit court.

History. Acts 1905, No. 337, §§ 2-5, p. §§ 11-13; A.S.A. 1947, §§ 59-702 — 59-794; C. & M. Dig., §§ 3562-3565; Pope's 705.
Dig., §§ 4448-4451; Acts 1981, No. 714,

9-11-604. Setting apart dower or curtesy as life estate in certain lands.

(a)(1) Any person owning lands in this state whose spouse is adjudged permanently insane may apply by petition to the circuit court of the county where the lands or the greater part thereof are situated to have a life estate in a part of the lands set apart to the spouse in lieu of the spouse's inchoate right of dower or curtesy, as the case may be, in all of the lands and the remaining lands discharged and unencumbered of the dower or curtesy interest of the spouse.

(2) The petition shall set forth the insanity of the spouse, the nature and duration thereof, the person with whom and the place at which the spouse may then be residing, describing all the real estate of the plaintiff, and that it will be to the best interest of all parties.

(b) On the filing of the petition, the court shall appoint some reliable person, a citizen of the county, not related to either of the parties nor interested directly or indirectly in the real estate nor in any part thereof as guardian ad litem for the spouse. The guardian ad litem shall forthwith cause the appearance of the spouse to be entered of record in the case and make such pleadings in the case from time to time as may seem fit to him or her for the interest of his or her ward and be consistent with the practice of the court. All acts of the guardian ad litem shall be deemed valid and binding on his or her ward.

(c) The court on hearing the petition and being satisfied that it will be to the best interests of the parties to have the life estate in a part of the lands set apart to the spouse in lieu of dower or curtesy in the whole of the lands shall appoint three (3) persons as commissioners not interested in the lands nor in any part thereof who shall set apart the life estate in lieu of dower or curtesy, designating specifically the lands. They shall make their report to the court, which report shall be subject to the approval of the court.

(d) On approval of the report of the commissioners, the court shall make an order and decree divesting the dower or curtesy of the spouse out of the real estate of the plaintiff and in lieu thereof vesting in the spouse a life estate of the lands designated by the commissioners, and authorizing and empowering the plaintiff to sell the remainder of the lands or to mortgage and encumber the remainder of the lands free from any dower or curtesy rights of the spouse.

History. Acts 1907, No. 393, §§ 1-3, p. 4454; Acts 1981, No. 714, §§ 14-16; A.S.A. 985; C. & M. Dig., §§ 3566-3568; Acts 1947, §§ 59-706 — 59-708.
1923, No. 472, § 1; Pope's Dig., §§ 4452-

SUBCHAPTER 7 — VALIDATING ACTS

SECTION.

- 9-11-701. Persons acting for clerk.
- 9-11-702. Marriages performed by mayors.
- 9-11-703. Recordation of credentials of clerical character — Applicability of § 9-11-214.

SECTION.

- 9-11-704. Marriages solemnized out of county.
- 9-11-705. Marriages solemnized by municipal court judges.
- 9-11-706. Marriage before entry of divorce decree.

Effective Dates. Acts 1843, p. 55, § 3: Apr. 1, 1843.

Acts 1873, No. 2, § 4: effective on passage, provided the penalty prescribed in the act should not be enforced within 60 days.

Acts 1885, No. 110, § 3: effective on passage.

Acts 1945, No. 6, § 3: Jan. 26, 1945. Emergency clause provided: "On account of the fact that persons other than county clerks or their deputies have issued marriage licenses and the legality of the marriages consummated thereunder has been called into question by reason of the fact that such licenses were not issued by the county clerk or his legally appointed deputy an emergency is found to exist and this act, being necessary for the immediate preservation of the public peace, health and safety shall take effect and be in force from and after its passage."

Acts 1989 (3rd Ex. Sess.), No. 46, § 11: Nov. 14, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need to validate otherwise legal marriages declared void by court decisions, to declare and preserve the legitimacy of the children born of such marriages, and to validate all property rights between the parties themselves and third persons; that it is in the best interest of the state that this act declaring such marriages take effect immediately. It is further determined that it is in the best interest of the state that the actions of alienation of affection and criminal conversation be abolished immediately. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

RESEARCH REFERENCES

ALR. Validity of marriage as affected by lack of legal authority of person solemnizing it. 13 A.L.R.4th 1323.	Am. Jur. 52 Am. Jur. 2d, Marriage, § 33 et seq.
	C.J.S. 55 C.J.S., Marriage, § 43 et seq.

9-11-701. Persons acting for clerk.

- (a) The acts and deeds of all persons acting for and in behalf of any county clerk in this state in the issuance of marriage licenses prior to January 26, 1945, whether the person was a duly and legally appointed deputy of the county clerk or not, are declared to be as legal and valid as if the licenses had been issued by the county clerk in person.
- (b) All marriages solemnized in this state prior to January 26, 1945, pursuant to a marriage license issued by a person other than the county

clerk of the county wherein the license was issued or by the legally appointed deputy of the county clerk are declared to be valid. All the marriages shall be as binding and effectual as if the licenses had been issued by the county clerk of the county in person.

History. Acts 1945, No. 6, §§ 1, 2; A.S.A. 1947, §§ 55-231, 55-232.

9-11-702. Marriages performed by mayors.

All marriage ceremonies performed by mayors in the State of Arkansas prior to June 12, 1947, are declared to be valid.

History. Acts 1947, No. 231, § 2; A.S.A. 1947, § 55-216n.

9-11-703. Recordation of credentials of clerical character — Applicability of § 9-11-214.

(a) Section 9-11-214(a) and (b) shall not apply to those ministers and priests who properly filed their credentials prior to February 18, 1947, according to the law as it existed at the time the credentials were filed.

(b) Any marriage solemnized by any regularly ordained minister or priest of any religious sect or denomination in this state prior to February 18, 1947, is declared legal and valid, whether or not the minister or priest caused his or her license or credentials to be recorded as provided by § 9-11-214(a) and (b).

History. Acts 1843, § 2, p. 55; 1873, No. 2, § 2, p. 2; C. & M. Dig., § 7047; Pope's Dig., § 9027; Acts 1947, No. 93, §§ 1, 2; A.S.A. 1947, §§ 55-218, 55-218n. **Publisher's Notes.** Previous acts which validated marriages conducted by ministers or priests who had failed to record their credentials were: Acts 1881, No. 93; Acts 1891, No. 37; Acts 1917, No. 253.

9-11-704. Marriages solemnized out of county.

(a) All marriages between persons authorized to contract marriage and solemnized prior to March 31, 1885, by any justice of the peace, or any other person authorized by law to solemnize the rites of matrimony, of any county in any other county in this state, and the persons afterwards lived together as husband and wife, are declared to be legal and their children legitimate.

(b) All marriages so solemnized prior to March 31, 1885, by any justice of the peace, or any other person authorized by law to solemnize the rites of matrimony, of any county in any other county are legalized and made as binding between the married persons in every respect as if the rites of matrimony had been solemnized by a justice of the peace of the county where the marriage was solemnized.

History. Acts 1885, No. 110, §§ 1, 2, p. 182; C. & M. Dig., §§ 7070, 7071; Pope's Dig., §§ 9052, 9053; A.S.A. 1947, §§ 55-233, 55-234.

9-11-705. Marriages solemnized by municipal court judges.

All marriages solemnized by municipal court judges prior to July 20, 1987, are declared valid ab initio.

History. Acts 1987, No. 394, § 2.

9-11-706. Marriage before entry of divorce decree.

(a) It is the intent of this section to validate all marriages deemed void as a result of the decision of the Supreme Court in *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989), whether occurring prior to or subsequent to November 14, 1989.

(b)(1) All marriages heretofore or hereafter declared void because the parties had entered into an otherwise valid marriage after the rendition of a valid decree of divorce of either of the parties but before the entry for record of the decree are declared valid for all purposes.

(2) All children born to any marriage declared valid by this section are deemed to be the legitimate children of both parents for all purposes.

(3) All property rights, including, but not limited to, conveyances, inheritance, intestate succession, dower, curtesy, and all rights and duties between the parties themselves or third persons, are declared to be those of validly married persons.

(c) This section shall apply to all marriages occurring both prior and subsequent to November 14, 1989.

History. Acts 1989 (3rd Ex. Sess.), No. 46, §§ 1-5.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

SUBCHAPTER 8 — COVENANT MARRIAGE ACT

SECTION.	SECTION.
9-11-801. Title.	9-11-807. Applicability to already married couples.
9-11-802. Definitions.	9-11-808. Divorce or separation.
9-11-803. Covenant marriage.	9-11-809. Suit against spouse — Separation.
9-11-804. Content of declaration of intent.	9-11-810. Effects of separation.
9-11-805. Form of affidavit.	9-11-811. Informational pamphlet.
9-11-806. Other applicable rules.	

Effective Dates. Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes

the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also

effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

9-11-801. Title.

This subchapter shall be known and may be cited as the “Covenant Marriage Act of 2001”.

History. Acts 2001, No. 1486, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Raymond C. O'Brien, Family Law's Challenge to Religious Liberty, 35 U. Ark. Little Rock L. Rev. 3 (2012).

The Shackles of Covenant Marriage: Who Holds the Keys to Wedlock?, 25 U. Ark. Little Rock L. Rev. 261.

9-11-802. Definitions.

As used in this subchapter:

- (1) “Authorized counseling” means marital counseling provided by:
 - (A) A priest;
 - (B) A minister;
 - (C) A rabbi;
 - (D) A clerk of the Religious Society of Friends;
 - (E) Any clergy member of any religious sect or a designated representative;
 - (F) A marriage educator approved by the person who will perform the marriage ceremony; or
 - (G) As defined by § 17-27-102:
 - (i) A licensed professional counselor;
 - (ii) A licensed associate counselor;
 - (iii) A licensed marriage and family therapist;
 - (iv) A licensed clinical psychologist; or
 - (v) A licensed associate marriage and family therapist; and
- (2) “Judicial separation” means a judicial proceeding pursuant to § 9-11-809 that results in a court determination that the parties to a covenant marriage live separate and apart.

History. Acts 2001, No. 1486, § 5; 2003, No. 1115, § 1; 2003, No. 1473, § 15.

9-11-803. Covenant marriage.

(a)(1) A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship.

(2) Parties to a covenant marriage will have received authorized counseling emphasizing the nature, purposes, and responsibilities of marriage.

(3) Only when there has been a complete and total breach of the marital covenant commitment may a party seek a declaration that the marriage is no longer legally recognized.

(b)(1) A man and a woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license as otherwise required under this chapter and executing a declaration of intent to contract a covenant marriage as provided in § 9-11-804.

(2) The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

History. Acts 2001, No. 1486, § 5.

9-11-804. Content of declaration of intent.

(a) A declaration of intent to contract a covenant marriage shall contain all of the following:

(1) A recitation signed by both parties to the following effect:

“A COVENANT MARRIAGE

We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received authorized counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act of 2001, and we understand that a covenant marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Arkansas law on covenant marriages, and we promise to love, honor, and care for one another as husband and wife for the rest of our lives.”;

(2) An affidavit by the parties that they have received authorized counseling that shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce;

(3) An attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties received authorized counseling as to the nature and purpose of the marriage and the grounds for termination of the marriage and an acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of the Courts

under this subchapter that provides a full explanation of the terms and conditions of a covenant marriage; and

- (4)(A) The signature of both parties witnessed by a notary.
- (B) If one (1) of the parties is a minor, or both are minors, the written consent or authorization of those persons required under this chapter to consent to or authorize the marriage of minors.
- (b) The declaration shall consist of two (2) separate documents:
 - (1) The recitation as set out in subdivision (a)(1) of this section; and
 - (2) The affidavit with the attestation either included within or attached to the document.
- (c) The recitation, affidavit, and attestation shall be filed as provided in § 9-11-803(b).

History. Acts 2001, No. 1486, § 5; Acts 2011, No. 793, § 3.

9-11-805. Form of affidavit.

The following is the suggested form of the affidavit that may be used by the parties, notary, and counselor:

“STATE OF ARKANSAS
COUNTY OF _____
BE IT KNOWN THAT on this.... day of,, before me the undersigned notary, personally came and appeared:
..... and
who after being duly sworn by me, a notary, deposed and stated that:
Affiants acknowledge that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor, which marriage counseling included:
A discussion of the seriousness of covenant marriage;
Communication of the fact that a covenant marriage is a commitment for life;
The obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise; and
That affiants both read the pamphlet entitled “Covenant Marriage Act” developed and promulgated by the Administrative Office of the Courts, which provides a full explanation of a covenant marriage, including the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce or divorce after a judgment of separation from bed or board.
.....
(Name of prospective spouse)
.....
(Name of prospective spouse)
.....
SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF,

.....

.....

NOTARY PUBLIC

ATTESTATION

The undersigned attests that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is for life, and the obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

.....

Counselor”.

History. Acts 2001, No. 1486, § 5.

9-11-806. Other applicable rules.

A covenant marriage shall be governed by all of the provisions of this title, except as otherwise specifically provided in this subchapter.

History. Acts 2001, No. 1486, § 5.

9-11-807. Applicability to already married couples.

(a) A married couple, upon submission of a copy of their marriage certificate, which need not be certified, may execute a declaration of intent to designate their marriage as a covenant marriage to be governed by this subchapter.

(b) This declaration of intent in the form and containing the contents required by subsection (c) of this section must be filed with the officer who issues marriage licenses in the county in which the couple is domiciled.

(c)(1) A declaration of intent to redesignate a marriage as a covenant marriage shall contain all of the following:

(A) A recitation by the parties as set out in § 9-11-804;

(B) An affidavit by the parties as set out in § 9-11-805 that they have discussed their intent to designate their marriage as a covenant marriage with an authorized counselor that included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce;

(C) An attestation signed by the counselor and attached to the parties’ affidavit acknowledging that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of the Courts under this subchapter that provides a full explanation of the terms and conditions of a covenant marriage; and

(D) The signature of both parties witnessed by a notary.

(2)(A) The declaration shall contain two (2) separate documents:

- (i) The recitation; and
- (ii) The affidavit with the attestation either included within or attached to the document.

(B) The recitation, affidavit, and attestation shall be filed as provided in subsection (b) of this section.

History. Acts 2001, No. 1486, § 5.

9-11-808. Divorce or separation.

(a) Notwithstanding any other law to the contrary and subsequent to the parties' obtaining authorized counseling, a spouse to a covenant marriage may obtain a judgment of divorce only upon proof of any of the following:

- (1) The other spouse has committed adultery;
- (2) The other spouse has committed a felony or other infamous crime;
- (3) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one (1) of the spouses;
- (4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or
- (5)(A) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years from the date the judgment of judicial separation was signed.

(B)(i) If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of two (2) years and six (6) months from the date the judgment of judicial separation was signed.

(ii) However, if abuse of a child of the marriage or a child of one (1) of the spouses is the basis for which the judgment of judicial separation was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one (1) year from the date the judgment of judicial separation was signed.

(b) Notwithstanding any other law to the contrary and subsequent to the parties' obtaining authorized counseling, a spouse to a covenant marriage may obtain a judgment of judicial separation only upon proof of any of the following:

- (1) The other spouse has committed adultery;
- (2) The other spouse has committed a felony and has been sentenced to death or imprisonment;
- (3) The other spouse has physically or sexually abused the spouse seeking the legal separation or divorce or a child of one (1) of the spouses;
- (4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or
- (5) The other spouse shall:
 - (A) Be addicted to habitual drunkenness for one (1) year;
 - (B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable.

History. Acts 2001, No. 1486, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.
Legislation, 2001 Arkansas General As-

CASE NOTES

Divorce Improperly Granted.

Circuit court granted the wife a divorce, although she did not attend the trial to prosecute her claim, based solely on testimony offered by the husband to prove and corroborate the wife's ground of adultery; the circuit court had the authority to dismiss the wife's amended complaint for

failure to prosecute, or the circuit court could have continued the case, but there was no known authority to permit the husband to proceed with the wife's amended complaint, which she declined to prosecute, and the matter was reversed. *Olson v. Olson*, 2014 Ark. 537, 453 S.W.3d 128 (2014).

9-11-809. Suit against spouse — Separation.

(a) Unless judicially separated, spouses in a covenant marriage may not sue each other except for causes of action:

- (1) Pertaining to contracts;
- (2) For restitution of separate property;
- (3) For judicial separation in covenant marriages;
- (4) For divorce or for declaration of nullity of the marriage; and
- (5) For causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart, although not judicially separated.

(b)(1) Any court that is competent to preside over divorce proceedings has jurisdiction of an action for judicial separation or divorce in a covenant marriage if:

(A) One (1) or both of the spouses are domiciled in this state and the ground for judicial separation or divorce in a covenant marriage was committed or occurred in this state or while the matrimonial domicile was in this state; or

(B) The ground therefor occurred elsewhere while either or both of the spouses were domiciled elsewhere, provided the person obtaining the judicial separation was domiciled in this state prior to the time the cause of action accrued and is domiciled in this state at the time the action is filed.

(2) An action for a judicial separation in a covenant marriage shall be brought in a county where either party is domiciled, or in the county of the last matrimonial domicile.

(3) The venue provided in this section may not be waived, and a judgment of separation rendered by a court of improper venue is an absolute nullity.

(c) Judgments on the pleadings and summary judgments shall not be granted in any action for judicial separation in a covenant marriage.

(d) In a proceeding for a judicial separation in a covenant marriage or thereafter, a court may award a spouse all incidental relief afforded in a proceeding for divorce, including, but not limited to, spousal support, claims for contributions to education, child custody, visitation rights, child support, injunctive relief, and possession and use of a family residence or joint property.

History. Acts 2001, No. 1486, § 5.

9-11-810. Effects of separation.

(a) Judicial separation in a covenant marriage does not dissolve the bond of matrimony since the separated husband and wife are not at liberty to marry again, but it puts an end to their conjugal cohabitation and to the common concerns that existed between them.

(b) Spouses who are judicially separated in a covenant marriage shall retain that status until either reconciliation or divorce.

History. Acts 2001, No. 1486, § 5.

9-11-811. Informational pamphlet.

(a) The Administrative Office of the Courts shall promulgate an informational pamphlet, entitled “Covenant Marriage Act of 2001”, which shall outline in sufficient detail the consequences of entering into a covenant marriage.

(b) The informational pamphlet shall be made available to any counselor who provides authorized counseling as provided for by this subchapter.

History. Acts 2001, No. 1486, § 5.

CHAPTER 12

DIVORCE AND ANNULMENT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ANNULMENT.
3. ACTIONS FOR DIVORCE OR ALIMONY.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-12-101. Subsequent marriage before
dissolution of prior mar-
riage prohibited.

9-12-101. Subsequent marriage before dissolution of prior marriage prohibited.

No subsequent or second marriage shall be contracted by any person during the lifetime of any former husband or wife of the person unless the marriage with the former husband or wife has been dissolved for some one (1) of the causes set forth in the law concerning divorces by a court of competent authority.

History. Rev. Stat., ch. 94, § 6; C. & M. Dig., § 7042; Pope's Dig., § 9022; A.S.A. 1947, § 55-108.

RESEARCH REFERENCES

Ark. L. Rev. The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

CASE NOTES

Void Marriage.

A marriage in violation of this section is void and no decree is necessary to avoid it. *Goset v. Goset*, 112 Ark. 47, 164 S.W. 759 (1914).

A bigamous marriage is void though one of the parties entered into it in good faith. *Evatt v. Miller*, 114 Ark. 84, 169 S.W. 817 (1914).

This section does not apply to void marriages and where wife was married prior

to the granting of divorce from former husband, court had jurisdiction to annul the marriage. *Bramble v. Kemper*, 227 Ark. 186, 297 S.W.2d 104 (1957).

A subsequent marriage before dissolution of a prior marriage is void. *Acuna v. Sullivan*, 765 F. Supp. 510 (E.D. Ark. 1991).

Cited: *Smiley v. Smiley*, 247 Ark. 933, 448 S.W.2d 642 (1970); *Clark v. Clark*, 19 Ark. App. 280, 719 S.W.2d 712 (1986).

SUBCHAPTER 2 — ANNULMENT

SECTION.

9-12-201. Grounds.

9-12-202. Proceedings for annulment to be in equity — Venue.

RESEARCH REFERENCES

ALR. Prior institution of annulment proceedings or other attack on validity of one's marriage as barring or estopping one from entitlement to property rights as surviving spouse. 31 A.L.R.4th 1190.

Homosexuality, transvestitism and similar sexual practices as grounds for annulment of marriage. 68 A.L.R.4th 1069.

Power of incompetent spouse's guardian or representative to sue for granting or vacation of divorce or annulment of mar-

riage, or to make compromise or settlement in such suit. 32 A.L.R.5th 673.

Am. Jur. 4 Am. Jur. 2d, Annulment of Marriage, § 1 et seq.

Ark. L. Rev. Domestic Relations — Annulment for Failure to Reveal Family Morals, 5 Ark. L. Rev. 442.

The Effect of Void and Voidable Marriages in Arkansas, 10 Ark. L. Rev. 188.

The Cause of Action for Annulment of Marriage in Arkansas, 14 Ark. L. Rev. 85.

C.J.S. 55 C.J.S., Marriage, § 70 et seq.

9-12-201. Grounds.

When either of the parties to a marriage is incapable from want of age or understanding of consenting to any marriage, or is incapable of entering into the marriage state due to physical causes, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

History. Rev. Stat., ch. 94, § 5; C. & M. Dig., § 7041; Pope's Dig., § 9021; A.S.A. 1947, § 55-106.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

CASE NOTES

ANALYSIS

In General.
Construction.
Abatement on Death of Party.
Alimony.
Attorney's Fees.
Burden of Proof.
Conflict of Laws.
Fraud.
Minors.
Nonresidents.
Particular Grounds.
Res Judicata.
Time of Bringing Action.

In General.

A marriage may be annulled only for causes set up by statute. *Phillips v. Phillips*, 182 Ark. 206, 31 S.W.2d 134 (1930).

Construction.

The word "void" as used in this section is used in the sense that the marriage can be avoided. *Ragan v. Cox*, 210 Ark. 152, 194 S.W.2d 681 (1946).

The word "void" as used in this section means voidable. *Vance v. Hinch*, 222 Ark. 494, 261 S.W.2d 412 (1953).

The words "want of understanding" as used in this section are broad enough to include a person of unsound mind. *Vance*

v. Hinch, 222 Ark. 494, 261 S.W.2d 412 (1953).

Abatement on Death of Party.

Administrator of a husband's estate lacked standing to appeal the denial of his motion to be substituted as a party for the husband in the wife's annulment action because he was not a party below. Additionally, pursuant to this section, providing for annulment during the lives of the parties, the annulment action abated on the death of the husband. *Stuhr v. Oliver*, 2010 Ark. 189, 363 S.W.3d 316 (2010).

Alimony.

Where a guardian sues to annul a marriage between an infant husband and infant wife, wife cannot sue guardian or parent for alimony. *Erwin v. Erwin*, 120 Ark. 581, 180 S.W. 186 (1915).

Attorney's Fees.

Where evidence did not sustain annulment of marriage, defendant wife was entitled to award of fees for her attorney. *Shatford v. Shatford*, 214 Ark. 612, 217 S.W.2d 917 (1949).

Burden of Proof.

Burden of proof is upon husband to establish fraud where he files an action to annul marriage on the ground of fraud.

Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 (1949).

Conflict of Laws.

The validity of a marriage must be determined by the law of the state where the marriage was contracted. Feigenbaum v. Feigenbaum, 210 Ark. 186, 194 S.W.2d 1012 (1946).

Fraud.

In action to annul marriage on the ground of fraud the plaintiff must establish the fraud with the same amount of evidence, as is required in an action to set aside a deed or other written contract on the ground of fraud. Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 (1949).

Evidence did not justify annulment of marriage on the ground of false representation. Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 (1949).

Minors.

This section reaffirms public policy of the state to the effect that underage marriages, valid where contracted, are not void in Arkansas until nullified by a court of competent jurisdiction. State v. Graves, 228 Ark. 378, 307 S.W.2d 545 (1957).

The public policy of Arkansas against underage marriages is not such that a marriage, valid in the state where contracted, would be void in Arkansas. State v. Graves, 228 Ark. 378, 307 S.W.2d 545 (1957).

Nonresidents.

An Arkansas court has jurisdiction of a suit by a nonresident against a nonresident for the annulment of a marriage contracted between them in Arkansas. Feigenbaum v. Feigenbaum, 210 Ark. 186, 194 S.W.2d 1012 (1946).

Particular Grounds.

Marriage induced through fear of prosecution for having seduced a girl is not ground for annulling the marriage. Kibler

v. Kibler, 180 Ark. 1152, 24 S.W.2d 867 (1930).

A marriage may be annulled when one of the parties is infected with syphilis. Brown v. Brown, 181 Ark. 528, 27 S.W.2d 85 (1930).

A woman who took part in a marriage ceremony at a time when by reason of intoxication she was incapable of consenting to marriage is entitled to have the marriage annulled. Bickley v. Carter, 190 Ark. 501, 79 S.W.2d 436 (1935).

Marriage induced by misrepresentation as to paternity of child may be annulled on the ground of fraud. Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 (1949).

In son's action for an injunction prohibiting his deceased father's wife from receiving the father's pension benefits, the son could not challenge the validity of the father's marriage on appeal where the issue of whether the marriage should be set aside on the ground of undue influence was argued before, and decided by, the trial court. Hooten v. Jensen, 94 Ark. App. 130, 227 S.W.3d 431 (2006).

Res Judicata.

Decision in an annulment proceeding brought on the ground of false representation as to paternity of child is not res judicata in either a paternity or heirship action, as child is not a party privy to the annulment proceeding. Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 (1949).

Time of Bringing Action.

The marriage of an insane person is voidable only, and is subject to attack, only during the lifetime of both parties. Vance v. Hinch, 222 Ark. 494, 261 S.W.2d 412 (1953).

A state of marriage can only be dissolved during the lives of the parties to the marriage by annulment or by divorce. Mabry v. Mabry, 259 Ark. 622, 535 S.W.2d 824 (1976).

9-12-202. Proceedings for annulment to be in equity — Venue.

(a) The action shall be by equitable proceedings in the county where the complainant or complainants reside.

(b) The process may be directed in the first instance to any county in the state where the defendant may then reside or be found.

History. Pope's Dig., § 9021A, as added by Acts 1947, No. 168, § 1; A.S.A. 1947, § 55-107.

RESEARCH REFERENCES

Ark. L. Rev. Acts of 1947. Changes in Venue Laws, 1 Ark. Law Rev. 209.

Conflict of Laws — Jurisdiction in Amendment, 22 Ark. L. Rev. 509.

CASE NOTES

Void Marriages.

This section does not apply to void marriages and where wife was married prior to the granting of divorce from former husband, chancery court of the county

where the void marriage was performed had jurisdiction to annul the marriage. *Bramble v. Kemper*, 227 Ark. 186, 297 S.W.2d 104 (1957).

SUBCHAPTER 3 — ACTIONS FOR DIVORCE OR ALIMONY

SECTION.

- 9-12-301. Grounds for divorce.
- 9-12-302. Equitable proceedings.
- 9-12-303. Venue — Service of process.
- 9-12-304. Pleadings — Interrogatories.
- 9-12-305. No judgment pro confesso.
- 9-12-306. Corroboration.
- 9-12-307. Matters that must be proved — Definition.
- 9-12-308. Effect of collusion, consent, or equal guilt of parties.
- 9-12-309. Maintenance and attorney's fees — Interest.
- 9-12-310. Waiting period before rendition of decree.
- 9-12-311. Legitimacy of children not affected.
- 9-12-312. Alimony — Child support — Bond — Method of payment — Definition.
- 9-12-313. Enforcement of separation agreements and decrees of court.

SECTION.

- 9-12-314. Modification of allowance for alimony and maintenance — Child support.
- 9-12-315. Division of property — Definition.
- 9-12-316. Property settlements.
- 9-12-317. Dissolution of estates by the entirety or survivorship.
- 9-12-318. Restoration of name.
- 9-12-319. Nonresident defendants — Warning orders — Entry of decree.
- 9-12-320. Proceedings subsequent to decree — Change of venue.
- 9-12-321. Annulment of decree of divorce.
- 9-12-322. Divorcing parents to attend parenting class.
- 9-12-323. Joint credit card accounts.
- 9-12-324. Decree dissolving a covenant marriage.
- 9-12-325. Condonation abolished.

Cross References. Divorce or annulment registration, § 20-18-502.

Effective Dates. Acts 1891, No. 26, § 2: effective on passage.

Acts 1893, No. 102, § 2: effective on passage.

Acts 1931, No. 71, in part: Feb. 26, 1931. Emergency clause provided: "This law being necessary to create the uniformity in divorce laws in the states of the union and being necessary for the immediate preservation of the public health, peace and safety of the citizens of the state of Arkan-

sas, an emergency is hereby declared and this law shall be in full force and effect from and after its passage."

Acts 1937, No. 167, § 2: effective on passage.

Acts 1939, No. 20, § 4: Jan. 27, 1939. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the State that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and

health of the State of Arkansas, it shall be in full force from and after its passage."

Acts 1943, No. 428, § 3: became law without Governor's signature, Apr. 1, 1943. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the State that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the State of Arkansas, it shall be in full force from and after its passage."

Acts 1945, No. 274, § 2: Mar. 20, 1945. Emergency clause provided: "This act being necessary for the immediate preservation of the public peace, health and safety of the state of Arkansas, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 16, § 3: Jan. 31, 1947. Emergency clause provided: "It is hereby ascertained and declared by the 56th General Assembly of the state of Arkansas, that there is a lack of uniformity in the construction and application of section 4394 in cases where the divorce is granted to the husband, when by reason of law it should apply to all divorce actions, and that with the law in its present state, great confusion occurs in the restoration of the proper legal name to the wife in divorce decrees, and accordingly, an emergency is declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1947, No. 159, § 2: Mar. 3, 1947. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the state that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the State of Arkansas, it shall be in full force from and after its passage."

Acts 1947, No. 340, § 3: Mar. 28, 1947. Emergency clause provided: "The general assembly of the state of Arkansas finds and declares that numerous injustices have been done because courts of equity within the state of Arkansas have lacked the power heretofore, upon dissolution of the marital status, to dissolve

estates in property created by the marital status; and that, accordingly, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in full force from and after the date of its passage and approval."

Acts 1953, No. 348, § 6: Mar. 28, 1953. Emergency clause provided: "Because it is ascertained and determined that it is vital to the continued foundation of the social structure of the state that laws be established for the protection of domestic relations, and this act being essential for the protection of public safety, peace and health of the state of Arkansas, it shall be in full force from and after its passage."

Acts 1957, No. 36: Feb. 11, 1957. Emergency clause provided: "Because it is ascertained and determined that confusion exists by reason of various conflicting decisions, particularly in *Squire v. Squire*, 186 Ark. 511, 54 S.W.2d 281, and *Cassen v. Cassen*, 211 Ark. 582, whereby many persons throughout the United States have been embarrassed and their marital status made obscure by reason of said conflicting decisions; and this Act being necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist and this Act shall take effect and be in full force from and after its passage and approval."

Acts 1959, No. 39, § 3: Feb. 13, 1959. Emergency clause provided: "Whereas, under existing law and procedure of the various chancery courts of this state, the authority of such judges to grant divorces in vacation in cases where the defendant is a nonresident of the state of Arkansas and against whom a warning order has been published, is doubtful, and should be clarified so as to prevent long delays, great inconvenience and hardship on resident plaintiffs in such cases, and the immediate passage of this act being necessary to correct said situation, Now, Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1963, No. 74, § 3: Feb. 21, 1963. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that it is vital to the social structure of this state that laws be estab-

lished for the protection of domestic relations and that only by the immediate passage of this act may this be accomplished. Therefore an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in effect from the date of its passage and approval."

Acts 1963, No. 190, § 2: Mar. 8, 1963. Emergency clause provided: "It is hereby found and determined by the General Assembly the present law regarding the venue of divorce actions is not clear, that such lack of clarity results in undue hardship on the people of this State, and that this can be corrected only by the immediate passage of this act. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in effect from the date of its passage and approval."

Acts 1969, No. 398, § 4: Apr. 11, 1969. Emergency clause provided: "It having been found by the General Assembly that in many cases plaintiffs, entitled to a divorce, are unable to prove by others matters for which a divorce should be granted, and unable to corroborate plaintiff's own testimony, and, therefore, unable to obtain a divorce which ought to be granted, to the harm of the plaintiff and of society in general, working an undue hardship on the parties, and so an emergency is declared to exist and this act being necessary to the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1975, No. 297, § 3: Mar. 3, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law regarding the venue for divorce actions is unduly harsh and restrictive and in many instances works a great hardship on the people of this State, and that it can be corrected only by the immediate passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in effect from the date of its passage and approval."

Acts 1975, No. 457, § 3: Mar. 18, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present law Chancery

Courts rendering decrees of divorce are authorized to dissolve estates by the entirety or survivorship held by the parties to the divorce and to treat such parties as tenants in common, but that considerable confusion results in such cases when the Court does not specifically dissolve such estates in the decree; that it is in the best interests of all parties concerned that the law on the subject be revised to provide that dissolution of estates by the entirety shall be automatic upon rendition of a final decree of divorce unless specifically provided otherwise in the decree; that this Act is designed to accomplish this purpose and to verify the law on the subject of estates by the entirety held by parties to a divorce proceeding, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 705, § 7: Emergency clause failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that in a dissenting opinion in the recent case of *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977), regarding Ark. Stat. Ann. Section 34-1214, a justice of the Arkansas Supreme Court said that 'The Arkansas law regarding property was enacted before the turn of the century and can no longer be defended historically or legally with any confidence', and that 'It clearly violates the Equal Protection Clauses of the Arkansas and the United States Constitutions'; that in the majority opinion in that same case the Court did not decide this issue, stating 'We will not decide constitutional issues unless their determination is essential to disposition of the case', and holding that this issue of property division at the time of a divorce action was not properly before it; that a decision holding that Ark. Stat. Ann. Section 34-1214 is unconstitutional would create chaos in all divorce actions then pending in Arkansas courts until such time as the Arkansas General Assembly could enact legislation to cover this subject; and that this Act is designed to correct and clarify the law on this subject. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval." Approved Apr. 2, 1979.

Acts 1981, No. 69, § 2: Feb. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present law relative to the division of marital property in divorce proceedings, if the court does not divide such property equally between the parties, the court is required to state in writing the basis and reasons for not dividing the property equally; that the requirement that such basis and reasons be stated in writing in all such cases results in unreasonable delays in such proceedings and in inconvenience to the parties and to the courts; that this Act is designed to permit the court to orally state the basis and reasons for such division of property and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 267, § 3: Mar. 2, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that in many cases in which any issue is contested the injured party, entitled to divorce, is unable to corroborate the injured party's own testimony as to grounds for divorce, and, therefore, is unable to obtain a divorce which ought to be granted. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 657, § 4: Mar. 23, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Supreme Court, in the case of Webb v. Webb, 262 Ark. 461, 557 S.W.2d 878 (1977), held that an award of alimony in fixed installments for a specified period of time is improper in that such award is in fact a gross sum instead of a continuing allowance; that this Act is designed to specifically authorize the award of alimony in fixed installments for a specified period of time in order that such payments will qualify as 'periodic payments' within the meaning of Section 71 (a) of the Internal Revenue Code; that

this Act should be given effect immediately to accomplish such purposes. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 714, § 75: Mar. 25, 1981. Emergency clause provided: "It has been found and is declared by the General Assembly of Arkansas that existing law relating to such matters as homestead, dower, curtesy, statutory allowances payable from a decedent's estate, and the right of a surviving spouse to take against the will of a decedent, do not in all circumstances provide for equal treatment between the sexes, that the constitutionality of such existing law has been drawn into question by decisions of the United States Supreme Court and the Arkansas Supreme Court, and that there is an urgent need to insure that the law provides equality in the property rights and interests of married persons. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

Acts 1981, No. 798, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the federal income tax consequences of property divisions incident to divorce can make the after tax results drastically different from the value before taxes, of property divided between the spouses; that this Act is designed to provide for the consideration of such tax consequences; and that this Act should be given effect immediately to alert all parties in divorce proceedings to the potential impact of federal income taxes upon property divisions. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 799, § 4: Mar. 28, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that under the present Arkansas law, there is no provision for a 'decree of legal separation'; that since there is no such provision, paragraph (3) of subsec-

tion (B) of Section 461 of the Civil Code as amended by Act 705 of 1979 actually has no application; that in a recent decision, the Arkansas Supreme Court carefully distinguished the proof requirements of absolute divorce and divorce from bed and board; that this Act is designed to clarify paragraph (3) of subsection (B) of Section 461 of the Civil Code, as amended, to specifically make the provisions thereof with respect to the division of property applicable not only in decrees of absolute divorce but also to decrees of divorce from bed and board; that this Act should be given effect immediately to render the provisions of present property division law compatible with the divorce law and cases. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1983, No. 369, § 5: Mar. 8, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the present law relating to the authority of the court with respect to division of corporate stock and other securities in divorce proceedings is unclear and in many cases inadequate to permit the court to do equity in the division of property; that this Act is designed to permit the court to order that the securities be distributed to one party on the condition that one-half of the fair market value of such securities would be set aside and distributed to the other party; that this Act is necessary to clarify the law in this respect and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 989, § 6: Aug. 1, 1985.

Acts 1987, No. 599, § 4: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that there is an urgent need for clarification as to what fees are permitted to be charged for support collection throughout the state. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989."

Acts 1991, No. 131, § 5: Feb. 12, 1991. Emergency clause provided: "It is hereby ascertained and determined by the General Assembly that it is vital to the social structure of the State that laws be established for the protection of domestic relations and that only by the immediate passage of this act may this be accomplished. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in effect from the date of its passage and approval."

Acts 1999, No. 1491, § 5: Apr. 15, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that present law does not address the circumstances where subsequent to an Arkansas divorce both parties leave the county of jurisdiction resulting in custody concerns being under the jurisdiction of the chancery court of the county where neither party resides; that this act addresses that problem and allows for the transfer of the case to the county of residence of either party; and that this act should, therefore, go into effect as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during

which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2019, No. 904, § 14: Jan. 1, 2020.

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Vacating or setting aside divorce decree after remarriage of party. 17 A.L.R.4th 1153.

Children's needs considered in making property division. 19 A.L.R.4th 239.

Escalation clause in divorce decree relating to alimony and child support. 19 A.L.R.4th 830.

Spouse's liability after divorce for community debt contracted by other spouse during marriage. 20 A.L.R.4th 211.

Appreciation in value of separate property during marriage without contribution by either spouse as separate or community property. 24 A.L.R.4th 453.

Excessiveness or adequacy of amount of money awarded as separate maintenance, alimony, or support for spouse without absolute divorce. 26 A.L.R.4th 1190.

Excessiveness or adequacy of money awarded as temporary alimony. 26 A.L.R.4th 1218.

Amount of alimony and child support combined. 27 A.L.R.4th 1038.

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Effect of death of party to divorce proceeding pending appeal or time allowed for appeal. 33 A.L.R.4th 47.

Valuation date for property being distributed pursuant to divorce. 34 A.L.R.4th 63.

Court's authority to award temporary alimony or suit money where existence of valid marriage is contested. 34 A.L.R.4th 814.

Reconciliation of spouses affecting decree. 36 A.L.R.4th 502.

Spouse's right to discovery of closely held corporation records during divorce proceeding. 38 A.L.R.4th 145.

Dissipation of assets prior to divorce as factor in determining property division.

41 A.L.R.4th 416.

Equitable distribution doctrine. 41 A.L.R.4th 481.

Treatment or valuation of stock options for purposes of dividing marital property. 46 A.L.R.4th 640; 46 A.L.R.4th 689.

Divorced or separated spouse's living with member of opposite sex as affecting other spouse's obligation of alimony or support under separation agreement. 47 A.L.R.4th 38.

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Propriety of property distribution leaving both parties with substantial ownership interest in same business. 56 A.L.R.4th 862.

Divorce order requiring that party not compete with former marital business. 59 A.L.R.4th 1075.

Treatment and method of valuation of future interest in real estate or trust property not realized during marriage. 62 A.L.R.4th 107.

Prejudgment interest awards in divorce cases. 62 A.L.R.4th 156.

Power to modify spousal support award for a limited term, issued in conjunction with divorce, so as to extend the term or make the award permanent. 62 A.L.R.4th 180.

Voluntary contributions to child's education expenses as factor justifying modification of spousal support award. 63 A.L.R.4th 436.

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Enforceability of separation agreement affecting property rights upon death of one party prior to final judgement of divorce. 67 A.L.R.4th 237.

Effect of court order prohibiting sale or transfer of property on party's right to change beneficiary of insurance policy. 68

A.L.R.4th 929.

Attributing undisclosed income to parent or spouse for purposes of making child or spousal support award. 70 A.L.R.4th 173.

Propriety of using contempt proceedings to enforce property settlement award or order. 72 A.L.R.4th 298.

Goodwill in medical or dental practice as property subject to distribution on dissolution of marriage. 76 A.L.R.4th 1025.

Goodwill in accounting practice as property subject to distribution on dissolution of marriage. 77 A.L.R.4th 645.

Accrued vacation, holiday time and sick leave as marital or separate property. 78 A.L.R.4th 1107.

Obligor spouse's death as affecting alimony. 79 A.L.R.4th 10.

What constitutes order made pursuant to state domestic law for purposes of qualified domestic relations order exemption to antialienation provision of ERISA. 79 A.L.R.4th 1081.

Court's authority to institute or increase spousal support award after discharge of prior property award in bankruptcy. 87 A.L.R.4th 353.

Spouse's right to order that other pay expert witness fees. 4 A.L.R.5th 403.

Joinder of tort action between spouses with proceeding for dissolution of marriage. 4 A.L.R.5th 972.

Consideration of tax consequences of capital gain or loss in distribution of marital property. 9 A.L.R.5th 568.

Award of interest on deferred installment payments of marital asset distribution. 10 A.L.R.5th 191.

Spouse's right to set off debt owed by other spouse against accrued spousal or child support payments. 11 A.L.R.5th 259.

Consideration of obligated spouse's earnings from overtime or "second job" held in addition to regular full-time employment in fixing alimony or child support awards. 17 A.L.R.5th 143.

Treatment of depreciation expenses claimed for tax or accounting purposes in determining ability to pay child or spousal support. 28 A.L.R.5th 46.

Worker's compensation benefits as marital property subject to distribution. 30 A.L.R.5th 139.

Full faith and credit "last-in-time" rule as applicable to sister state divorce or

custody judgement which is inconsistent with the forum state's earlier judgement. 36 A.L.R.5th 527.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Contingent fee contracts as marital property subject to distribution. 44 A.L.R.5th 671.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

Alimony as affected by recipient spouse's remarriage, in absence of controlling statute. 47 A.L.R.5th 129.

Validity, construction, and application of provision in separation agreement affecting distribution or payment of attorneys' fees. 47 A.L.R.5th 207.

Lump-sum alimony award. 49 A.L.R.5th 441.

Alimony or child-support awards as subject to attorney's liens. 49 A.L.R.5th 595.

Enforcement of claim for alimony or for attorneys' fees or costs incurred in connection therewith, against exemptions. 52 A.L.R.5th 221.

Assumption or denial of jurisdiction of action involving matrimonial disputes based on forum non conveniens. 55 A.L.R.5th 647.

Consideration of obligor spouse's or parents' personal-injury recovery or settlement in fixing alimony or child-support. 59 A.L.R.5th 489.

Effect of same-sex relationship on right to spousal support. 73 A.L.R.5th 599.

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Womack, 247 Ark. 1130, 449 S.W.2d 399 (1970); Hughes v. Hughes, 251 Ark. 63, 471 S.W.2d 355 (1971); Lovett v. Lovett, 254 Ark. 349, 493 S.W.2d 435 (1973); Dunn v. Dunn, 255 Ark. 764, 503 S.W.2d 168 (1973).

9-12-301. Grounds for divorce.

(a) A plaintiff who seeks to dissolve and set aside a covenant marriage shall state in his or her petition for divorce that he or she is seeking to dissolve a covenant marriage as authorized under the Covenant Marriage Act of 2001, § 9-11-801 et seq.

(b) The circuit court shall have power to dissolve and set aside a marriage contract, not only from bed and board, but from the bonds of matrimony, for the following causes:

(1) When either party, at the time of the contract, was and still is impotent;

(2) When either party shall be convicted of a felony or other infamous crime;

(3) When either party shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable;

(4) When either party shall have committed adultery subsequent to the marriage;

(5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation, the court shall grant an absolute decree of divorce at the suit of either party, whether the separation was the voluntary act of one (1) party or by the mutual consent of both parties or due to the fault of either party or both parties;

(6)(A) In all cases in which a husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by

reason of the incurable insanity of one (1) of them, the court shall grant a decree of absolute divorce upon the petition of the sane spouse if the proof shows that the insane spouse has been committed to an institution for the care and treatment of the insane for three (3) or more years prior to the filing of the suit, has been adjudged to be of unsound mind by a court of competent jurisdiction, and has not been discharged from such adjudication by the court and the proof of insanity is supported by the evidence of two (2) reputable physicians familiar with the mental condition of the spouse, one (1) of whom shall be a regularly practicing physician in the community wherein the spouse resided, and when the insane spouse has been confined in an institution for the care and treatment of the insane, that the proof in the case is supported by the evidence of the superintendent or one (1) of the physicians of the institution wherein the insane spouse has been confined.

(B)(i) In all decrees granted under this subdivision (b)(6), the court shall require the plaintiff to provide for the care and maintenance of the insane defendant so long as he or she may live.

(ii) The trial court will retain jurisdiction of the parties and the cause from term to term for the purpose of making such further orders as equity may require to enforce the provisions of the decree requiring the plaintiff to furnish funds for such care and maintenance.

(C)(i) Service of process upon an insane spouse shall be had by service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or upon a duly appointed guardian ad litem for the insane spouse, and when the insane spouse is confined in an institution for the care of the insane, upon the superintendent or physician in charge of the institution wherein the insane spouse is at the time confined.

(ii) However, when the insane spouse is not confined in an institution, service of process upon the duly appointed, qualified, and acting guardian of the insane spouse or duly appointed guardian ad litem and thereafter personal service or constructive service on an insane defendant by publication of warning order for four (4) weeks shall be sufficient; and

(7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessities of life, willfully fails to do so.

History. Civil Code, § 464; Acts 1873, No. 88, § 1[464], p. 213; C. & M. Dig., § 3500; Acts 1937, No. 167, § 1; Pope's Dig., § 4381; Acts 1939, No. 20, §§ 1, 2; 1943, No. 428, § 1; 1947, No. 159, § 1; 1953, No. 161, § 1; 1953, No. 348, § 2; 1963, No. 74, § 1; 1981, No. 633, § 5; 1985, No. 360, § 1; A.S.A. 1947, § 34-

1202; Acts 1991, No. 131, §§ 1, 2; 2005, No. 1890, § 1.

A.C.R.C. Notes. Acts 2005, No. 1890, § 3, provided: "This act shall apply to all petitions for divorce filed on or after the effective date of this act."

Acts 2005, No. 1890 became effective August 12, 2005.

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The act amending this statute so as to allow divorce after separation for three consecutive years was legally passed and is retroactive. *White v. White*, 196 Ark. 29, 116 S.W.2d 616 (1938).

The act amending subdivision (b)(5) of this section so as to require that the

husband and wife shall have lived separate and apart for three consecutive years (now 18 months) without cohabitation was not beyond the power of the legislature to enact. *Jones v. Jones*, 199 Ark. 1000, 137 S.W.2d 238 (1940) (decision prior to the 1991 amendments).

Act abolishing recrimination as a defense against three-year separation is not unconstitutional as impinging upon equity jurisdiction, since the court of equity has the right to grant divorces on grounds and conditions prescribed by the legislature. *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944).

In General.

Where it appears that conditions between a husband and wife have become unendurable without any hope of amelioration and a preponderance of the evidence shows that the husband by his conduct is chiefly responsible, the wife is entitled to a divorce from the bonds of matrimony. *Lemaster v. Lemaster*, 158 Ark. 206, 249 S.W. 589 (1923).

Divorce is a statutory matter and the legislature has a right to establish the grounds and conditions of divorce. *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944).

Adultery.

Where a husband sues his wife upon the ground of adultery, the alleged adultery cannot be proved by evidence tending to show that she had a general reputation for unchastity. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

The charge of adultery may be sufficiently proved by evidence leading to an inference of guilt. While the circumstances need not be such that an inference of guilt is the only possible conclusion that can be drawn therefrom, the facts must be such as to lead a just and reasonable man to the conclusion of guilt; and they are not sufficient if they merely justify a suspicion of guilt in the absence of other incriminating circumstances. *Leonard v. Leonard*, 101 Ark. 522, 142 S.W. 1133 (1912).

Charges of adultery in a civil proceeding may be sufficiently proved by evidence of circumstances leading to an inference of guilt. *Gibson v. Gibson*, 234 Ark. 954, 356 S.W.2d 728 (1962).

Appeals.

Where divorce decree was granted under three-year (now 18-month) separation provision of this section, the wife's remarriage during the pendency of appeal did not estop her from appealing the grant of the divorce to the husband, the failure to award her alimony and the settlement of property rights. *Neal v. Neal*, 258 Ark. 338, 524 S.W.2d 460 (1975).

Although in divorce actions the Court of Appeals reviews chancery cases de novo, it does not disturb a chancellor's finding unless it is clearly against a preponderance of the evidence. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Attorney's Fees.

The award of attorney's fees in divorce cases is a matter lying within the sound judicial discretion of the chancellor, the exercise of which will not be disturbed on appeal in the absence of its abuse. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

Chancery Court.

The chancery court has the power to decree separate maintenance to the wife. *Gilliam v. Gilliam*, 232 Ark. 765, 340 S.W.2d 272 (1960).

Chancery courts have the power to set aside a default divorce, even after the death of one of the parties, if property interests of the survivor are affected. *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

Comparative Fault.

Where a husband sued for a divorce, and his wife cross-claimed for a limited

divorce from bed and board and both the husband and wife were at fault, nevertheless, the wife was entitled to a limited divorce as the party less at fault, since her husband was the greater and first offender. *Posey v. Posey*, 268 Ark. 894, 597 S.W.2d 834 (Ct. App. 1980).

Cruelty.

Wife will not be granted a divorce on account of the cruelty of her husband in chastising her if she has given him serious provocation by her imprudent conduct. *Shirey v. Shirey*, 87 Ark. 175, 112 S.W. 369 (1908).

Profane and abusive language employed by a husband toward his wife will not constitute legal cruelty where it does not appear that her health was impaired or her condition rendered intolerable. *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912).

Mere incompatibility of temperament or want of congeniality and the consequent quarrels causing unhappiness are not sufficient to constitute that cruelty which under the statute will justify divorce. *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912); *Disheroon v. Disheroon*, 211 Ark. 519, 201 S.W.2d 17 (1947).

There must be proof of specific acts of cruelty. *Dunn v. Dunn*, 114 Ark. 516, 170 S.W. 234 (1914).

A husband is not entitled to a divorce on account of his wife's cruelty toward his children by a former wife where it appears that her cruelty is not habitual nor exercised with the intent of causing suffering to the husband. *Poe v. Poe*, 149 Ark. 62, 231 S.W. 198 (1921).

Evidence sufficient to find spouse entitled to a divorce on the ground of cruelty. *Crabtree v. Crabtree*, 154 Ark. 401, 242 S.W. 804 (1922).

There were grounds for a divorce based on cruel and barbarous treatment where husband lunged at wife through the window of her car, grabbed her neck, pushed her against the seat, and strangled her to the point that she could not breathe and felt as if she were choking. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Divorce from Bed and Board.

A limited divorce is called divorce from bed and board in the statute; it is also known as divorce a mensa et thoro. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

The grounds on which a divorce from bed and board may be granted are the same as those specified for an absolute divorce. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979); *Kesterson v. Kesterson*, 21 Ark. App. 287, 731 S.W.2d 786 (1987).

The statutory remedy of limited divorce (divorce mensa et thoro) is available only on proof of one of the statutory grounds. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Foreign Decree.

Decree for wife in husband's suit for divorce in another state charging habitual indulgence in violent and ungovernable fits of temper and extreme cruelty was held *res judicata* in subsequent suit in Arkansas charging indignities rendering husband's condition in life intolerable. *Blauvelt v. Blauvelt*, 199 Ark. 710, 136 S.W.2d 201 (1940).

Decree for wife in husband's suit for divorce in another state on grounds of ungovernable temper and extreme cruelty would not be *res judicata* in subsequent suit in Arkansas on ground of desertion if the desertion occurred after the adjudication of former action. *Blauvelt v. Blauvelt*, 199 Ark. 710, 136 S.W.2d 201 (1940).

Former adjudication in other states wherein the legal right created by this section was not available was held not *res judicata* in husband's suit for divorce. *Goud v. Goud*, 203 Ark. 244, 156 S.W.2d 225 (1941).

Where husband and wife lived separate and apart without cohabitation for more than three years, husband was entitled to a divorce on that ground notwithstanding former decree in favor of wife in separate maintenance suit in another state. *Brickey v. Brickey*, 205 Ark. 373, 168 S.W.2d 845 (1943).

Divorce, granted in Arkansas, was reversed, case dismissed and the parties remanded to state which granted a prior separate maintenance agreement for any orders for maintenance. *Swanson v. Swanson*, 212 Ark. 439, 206 S.W.2d 169 (1947).

Habitual Drunkenness.

One is addicted to habitual drunkenness who has a fixed habit of frequently getting drunk. *Brown v. Brown*, 38 Ark. 324 (1881).

To be a habitual drunkard within the meaning of this section, a person does not

have to be constantly drunk nor incapacitated from doing business; it is sufficient if he has a fixed habit of frequently and repeatedly getting drunk when the opportunity presents itself or has lost the will power to resist temptation in that respect. *O'Kane v. O'Kane*, 103 Ark. 382, 147 S.W. 73 (1912).

Evidence insufficient to show that spouse was a habitual drunkard. *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

Indignities.

Personal indignities contemplated by the statute as grounds for divorce include rudeness, vulgarity, unmerited reproach, haughtiness, contempt, contumeliousness, studied neglect, intentional incivility, injury, manifest disdain, abusive language, malignant ridicule and every other plain manifestation of settled hate, alienation, and estrangement. *Rose v. Rose*, 9 Ark. 507 (1849); *Kurtz v. Kurtz*, 38 Ark. 119 (1881).

The indignities to the person need not consist of personal violence. They may consist of unmerited reproach, rudeness, contempt, studied neglect, open insult, and many other things, habitually and systematically pursued, which may, according to the habits of the parties and their condition in life, be just as effectually within the statute as personal violence. *Haley v. Haley*, 44 Ark. 429 (1884). See also *Cate v. Cate*, 53 Ark. 484, 14 S.W. 675 (1890).

Evidence of indignities was sufficient to show entitlement to divorce. *McGee v. McGee*, 72 Ark. 355, 80 S.W. 579 (1904); *Bell v. Bell*, 179 Ark. 171, 14 S.W.2d 551 (1929); *Bullington v. Bullington*, 194 Ark. 1155, 106 S.W.2d 185 (1937); *Morgan v. Morgan*, 202 Ark. 76, 148 S.W.2d 1078 (1941); *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982); *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Want of congeniality and consequent quarrels are not sufficient to constitute indignities. *Bell v. Bell*, 105 Ark. 194, 150 S.W. 1031 (1912).

The remedy of absolute divorce contemplated by subdivision (b)(4) of this section is for evils which are unavoidable and unendurable and which cannot be relieved

by any exertions of the party seeking the aid of the courts. *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915).

To authorize a divorce for indignities, conduct of the offending party must indicate settled hate and manifestation of alienation and estrangement and must have been conducted habitually through a period of time sufficient to show that the conduct arose through settled malevolence rendering it impossible to discharge the duties of married life and making one's condition in life intolerable. *Preas v. Preas*, 188 Ark. 854, 67 S.W.2d 1013 (1934).

Testimony held insufficient to warrant a divorce for indignities. *Welborn v. Welborn*, 189 Ark. 1063, 76 S.W.2d 98 (1934); *Fine v. Fine*, 209 Ark. 754, 192 S.W.2d 212 (1946); *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Copeland v. Copeland*, 2 Ark. App. 55, 616 S.W.2d 773 (1981).

Person to whom a divorce is granted on the ground of indignities does not have to be wholly blameless. *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954).

Condonation of indignities is not a defense if indignities cover a period of time until final separation. *Coffey v. Coffey*, 223 Ark. 607, 267 S.W.2d 499 (1954).

The statutory requirement that indignities of the offending spouse must be such as to make the other's condition intolerable was not satisfied. *Lipscomb v. Lipscomb*, 226 Ark. 956, 295 S.W.2d 335 (1956).

Indignities may mean a number of things in various circumstances, but to constitute the grounds for divorce they must be constantly and persistently pursued with the object and effect of rendering the situation of the opposing party intolerable. *Gibson v. Gibson*, 234 Ark. 954, 356 S.W.2d 728 (1962).

The charge of sexual promiscuity or infidelity is probably the most offensive charge which one spouse can make against the other, and it has been frequently held that to make such a charge without basis is an indignity entitling the person charged to a divorce. *Relaford v. Relaford*, 235 Ark. 325, 359 S.W.2d 801 (1962).

Drunken conduct may be proved along with other acts to establish indignities rendering the plaintiff's life intolerable in

which case it is not necessary to show habitual drunkenness for a period of at least a year. *Carmical v. Carmical*, 246 Ark. 1142, 441 S.W.2d 103 (1969).

Although the scope of the indignities ground has undergone considerable expansion throughout the years, it is still necessary that the conduct relied upon manifest hate, alienation, and estrangement and be constantly and systematically pursued with the purpose and effect of causing an enduring alienation and estrangement and rendering the condition of the spouse intolerable. *Lytle v. Lytle*, 266 Ark. 124, 583 S.W.2d 1 (1979).

In contested cases, indignities do not exist absent habitual, continuous, permanent, and plain manifestation of settled hate, alienation, and estrangement on the part of one spouse, sufficient to render the condition of the other intolerable. *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979).

Drunken conduct may be proved, along with other acts, to establish the general indignities which have rendered the plaintiff's marital life intolerable. *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982).

A divorce will be granted when one spouse proves that the other had offered such indignities to her person as to render her condition in life intolerable; personal indignities may consist of rudeness, unmerited reproach, contempt, studied neglect, open insult and other plain manifestations of settled hate, alienation, or estrangement so habitually, continuously, and permanently pursued as to create an intolerable condition. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

The ground of indignities to the person must be proved by evidence of specific acts and conduct. *Gunnell v. Gunnell*, 30 Ark. App. 4, 780 S.W.2d 597 (1989).

Where wife asserted indignities as grounds in her complaint for divorce but the chancellor granted the divorce on the grounds of "spousal abuse," the appellate court found no reversible error as the term "spousal abuse" was, under the circumstances, equivalent to the recognized ground of cruel and barbarous treatment. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Trial court did not clearly err in granting a wife a divorce on the ground of

general indignities pursuant to subdivision (b)(3)(C) of this section because the wife showed that the husband frequently directed his wrath toward her in a manner that embarrassed, humiliated, and frightened her; that he publicly and privately harangued her over minor matters; that he acted in a dismissive and suspicious manner by leaving the house for hours without explanation, making a late-night phone call without saying to whom he was speaking, and being in possession of a romantic card from another woman; that he gambled frequently; and that she could not account for a large portion of the couple's joint funds. *Ransom v. Ransom*, 2009 Ark. App. 273, 309 S.W.3d 204 (2009).

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under subdivision (b)(3)(C) of this section, because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599 (2012).

Where a husband appealed a circuit court's divorce decree, the wife proved a prima facie case of general indignities, and, as required, she corroborated the general indignities. The wife offered proof of a continuing pattern of disrespectful, controlling behavior. *Walton v. Walton*, 2014 Ark. App. 105 (2014).

Even if the wife's testimony that the husband had made her feel inadequate and belittled for quite a while was sufficient to establish the ground for divorce based on general indignities, the trial court erred in granting a decree for an absolute divorce on that ground as the wife failed to provide any proof corroborating that ground because her sister's testimony was based on what the wife told her, not what she witnessed; and there was no other evidence tending to show general indignities on the part of the husband. *Lundy v. Lundy*, 2014 Ark. App. 573, 445 S.W.3d 518 (2014).

Wife was not entitled to a divorce on the ground of general indignities because she did not corroborate her allegations, as the allegedly corroborating testimony of her husband was insufficient to satisfy the corroboration requirement. *Mayland v.*

Mayland, 2019 Ark. App. 390, 586 S.W.3d 179 (2019).

Trial court's award of joint child custody was not inconsistent with the court's grant of a divorce on general indignities grounds because different considerations were required to make general-indignities and joint-custody findings. *Cunningham v. Cunningham*, 2019 Ark. App. 416, 588 S.W.3d 38 (2019).

There was ample evidence presented and corroborated by the wife's father to support granting the wife a divorce based on general indignities; the husband had numerous private phone conversations with his girlfriend within the bounds of matrimony, exercised financial control over the wife, and, according to her father, would not speak to her except to yell at her and argue with her, plus twice the father had to intervene to keep the husband from "manhandling" the wife. *Janjam v. Rajeshwari*, 2020 Ark. App. 448 (2020).

Insanity.

A divorce for incurable insanity granted to a spouse who is guardian for the insane requires service on the superintendent or physician in charge of the institution where the insane is confined and on a guardian ad litem and lack of representation by guardian ad litem and service thereon renders the divorce voidable and subject to direct attack on the ground of unavoidable casualty even after the death of the spouse to whom the divorce was granted, his or her personal representative and attorney being proper parties defendant in the action to vacate the divorce decree. *Jackson v. Bowman*, 226 Ark. 753, 294 S.W.2d 344 (1956).

Where a divorce was granted on grounds of the wife's insanity, the trial court's determination that the balance of the wife's attorney's fees should be paid from the wife's estate because of her independent financial resources was reversed as the insane spouse is entitled to every reasonable protection of her interests, including the finest legal services that can be obtained for her, at her husband's expense. *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965).

Nonsupport.

Evidence insufficient to show that spouse lacked the common necessities of

life. *Saugey v. Saugey*, 228 Ark. 110, 305 S.W.2d 856 (1957); *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

Pleadings.

Party in a divorce proceeding prior to trial of the action may amend his complaint and allege the maturity of a cause of action since the filing of the original complaint. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

If evidence is introduced during the trial of a divorce proceeding showing a different cause of action from the one alleged in the complaint, the defendant may waive the right to object to the new cause of action. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

Where plaintiff's complaint for divorce alleges one ground, evidence introduced at trial shows a cause of divorce on another ground, and defendant objects to the new cause of action, court must dismiss the suit as to first ground but without prejudice to the right of the plaintiff to file a new suit on the new ground. *Price v. Price*, 215 Ark. 425, 220 S.W.2d 1021 (1949).

Where a wife amended her original divorce complaint to seek instead only separate maintenance, that was the only type of decree which could have been entered by the trial court; the chancellor erred in granting the wife a divorce from bed and board and erred in dividing the marital property under § 9-12-315. *Spencer v. Spencer*, 275 Ark. 112, 627 S.W.2d 550 (1982).

Proof.

Husband was entitled to reversal of a divorce decree granted on the ground of general indignities; although the husband waived corroboration of grounds and failed to object to the sufficiency of proof of grounds at trial, the wife was required to offer sufficient, non-conclusory proof of grounds, which she failed to do. She offered only a general affirmative response to her attorney's question as to whether the husband had treated her in such a manner as to render her condition in life intolerable. *Dee v. Dee*, 99 Ark. App. 159, 258 S.W.3d 405 (2007).

—Admissibility of Evidence.

Ex parte affidavit of a third person cannot be used as independent evidence. Such affidavit cannot be received as independent testimony or as corroboration in a

divorce cause. *Wood v. Wood*, 232 Ark. 812, 340 S.W.2d 393 (1960).

—Burden of Proof.

Marriage contract should not be severed except upon clear proof of one or more of the grounds prescribed by this section. *Fania v. Fania*, 199 Ark. 368, 133 S.W.2d 654 (1939).

In an action for divorce the burden was on the plaintiff to show by corroborative evidence and a preponderance thereof, separation for three years (now 18 months) without cohabitation. *Ross v. Ross*, 213 Ark. 742, 213 S.W.2d 360 (1948).

Divorce is a creature of statute and can only be granted when statutory grounds have been proved and corroborated. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984); *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Regardless of whether a divorce is contested or uncontested, the injured party must always prove his or her ground(s) for divorce as set forth in this section; in other words, existing statutory law does not allow a spouse to stipulate to or waive grounds for divorce. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984); *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

—Corroboration.

Testimony held to be insufficiently corroborated. *Ledwidge v. Ledwidge*, 204 Ark. 1032, 166 S.W.2d 267 (1942); *Stimmel v. Stimmel*, 218 Ark. 293, 235 S.W.2d 959 (1951).

Allegation of separation for three years (now 18 months), which was admitted by the defendant, required corroboration. *Allen v. Allen*, 211 Ark. 335, 200 S.W.2d 324 (1947).

Corroborating evidence held to be sufficient. *Obennoskey v. Obennoskey*, 215 Ark. 358, 220 S.W.2d 610 (1949); *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Corroboration is as essential to the granting of a divorce on the grounds of three-year (now 18-month) separation as it is in any other case, but, where it is plain that the divorce action is not collusive, the corroboration may be comparatively slight; nonetheless, there must be corroboration to some substantial fact or circumstance independent of the testi-

mony of the party asserting the claimed separation period which would lead an impartial and reasonable mind to believe that the material testimony is true. *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982).

Res Judicata.

The rule of *res judicata* in divorce suits applies only when the second suit is on the same cause of action as the first suit. *Narisi v. Narisi*, 233 Ark. 525, 345 S.W.2d 620 (1961).

Separation.

Pleadings and affidavits supported the statutory grounds of 18 months' continuous separation without cohabitation, and the trial court erred as a matter of law by denying the husband's counterclaim for absolute divorce. *White v. Shepard*, 2015 Ark. App. 223, 459 S.W.3d 333 (2015).

—In General.

Divorce granted on grounds of separation. *Clarke v. Clarke*, 201 Ark. 10, 143 S.W.2d 540 (1940); *Day v. Langley*, 202 Ark. 775, 152 S.W.2d 308 (1941); *Goud v. Goud*, 203 Ark. 244, 156 S.W.2d 225 (1941); *McCall v. McCall*, 204 Ark. 836, 165 S.W.2d 255 (1942); *Carty v. Carty*, 222 Ark. 183, 258 S.W.2d 43 (1953); *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

Subdivision (b)(5) of this section makes a decree of divorce mandatory on the court at the suit of either party, where the conditions of the statute have been met, no matter what caused the separation. *Brooks v. Brooks*, 201 Ark. 14, 143 S.W.2d 1098 (1940); *McCormick v. McCormick*, 246 Ark. 348, 438 S.W.2d 23 (1969) (decision prior to the 1991 amendments).

Where husband left wife and child with the understanding that after he established himself they would join him, there was not a separation under subdivision (b)(5) of this section until they ceased to correspond with each other; and husband, praying for a divorce on that ground in cross-complaint to wife's suit for maintenance, had burden to show separation. *Bockman v. Bockman*, 202 Ark. 585, 151 S.W.2d 99 (1941).

If plaintiff files suit for divorce on statutory ground of desertion for three years (now 18 months) the court cannot consider any defense by the defendant based on the ground of misconduct of the plaintiff, as

this section is mandatory. *Warren v. Warren*, 214 Ark. 379, 216 S.W.2d 398 (1949).

Husband is entitled to divorce on ground of separation if separated from wife for three years (now 18 months), regardless of fault upon his part. *Mohr v. Mohr*, 214 Ark. 607, 215 S.W.2d 1020 (1949).

In a suit for divorce on the ground of three years' separation (now 18 months' separation), the question of who was the injured party may only be considered in settlement of property rights and the question of alimony. *Grytbak v. Grytbak*, 216 Ark. 674, 227 S.W.2d 633 (1950); *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

In action by wife to set aside divorce granted on grounds of separation, allegation that separation was result of husband having deserted wife constituted meritorious defense even though wife admitted separation. *Fair v. Fair*, 232 Ark. 800, 341 S.W.2d 22 (1960).

—Cohabitation.

Evidence established that husband and wife were not living separate and apart from each other within subdivision (b)(5) of this section. *McClure v. McClure*, 205 Ark. 1032, 172 S.W.2d 243 (1943); *Varnell v. Varnell*, 207 Ark. 711, 182 S.W.2d 466 (1944); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Oxford v. Oxford*, 237 Ark. 384, 373 S.W.2d 707 (1963).

When the legislature used the word "cohabitation," the popular sense purporting sexual intercourse, rather than the literal or derivative meaning of living together, was intended. *McClure v. McClure*, 205 Ark. 1032, 172 S.W.2d 243 (1943); *Varnell v. Varnell*, 207 Ark. 711, 182 S.W.2d 466 (1944).

Where access to a spouse is admitted, marital relations will be presumed. *Hancock v. Hancock*, 222 Ark. 823, 262 S.W.2d 881 (1953).

—Evidence.

Proof of alleged misconduct occurring more than five years before filing suit was admissible to show injured party. *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957).

Evidence of incidents which happened after separation was admissible to show who was the injured party. *Alexander v.*

Alexander, 227 Ark. 938, 302 S.W.2d 781 (1957).

Where for all outward appearances, the husband and wife lived separate and apart, and not as husband and wife, for over three years (now 18 months) immediately prior to the decree of divorce, the wife's stay of four nights at the motel where the husband lived did not break the continuity of their separation where, during the stay, the parties slept apart, and the husband denied having sexual relations with the wife. *Santostefano v. Santostefano*, 18 Ark. App. 173, 712 S.W.2d 324 (1986).

—Mutuality.

Subdivision (b)(5) of this section must be construed as though it read "when they have lived apart for three consecutive years [now 18 months]" so as to contemplate an agreement or understanding that they will act in concert of purpose, voluntarily living apart for three years, at the end of which period either may obtain a divorce from the other by alleging and establishing mutuality of the separation. *White v. White*, 196 Ark. 29, 116 S.W.2d 616 (1938).

Insane wife cannot be said to have voluntarily lived apart from her husband, and there was no element of mutuality in the separation which established a ground for divorce under subdivision (b)(6) of this section. *Carlson v. Carlson*, 198 Ark. 231, 128 S.W.2d 242 (1939).

Subdivision (b)(5) of this section as-

sumes that the period of living apart without cohabitation for three years (now 18 months) must have been the conscious act of both parties and the purpose is not to grant divorce on ground of insanity of either party. *Serio v. Serio*, 201 Ark. 11, 143 S.W.2d 1097 (1940); *Wilder v. Wilder*, 207 Ark. 414, 181 S.W.2d 17 (1944).

Husband was entitled to a divorce under subdivision (b)(5) of this section where parties had lived apart without cohabitation for three years (now 18 months) even though separation was involuntary upon wife's part and was under his coercion. *Brooks v. Brooks*, 201 Ark. 14, 143 S.W.2d 1098 (1940).

—Time Period.

Supreme Court has no authority to exclude from separation contemplated by subdivision (b)(5) of this section period of time during which parties lived apart under separation decree. *Jones v. Jones*, 199 Ark. 1000, 137 S.W.2d 238 (1940).

Time spent in military service may be included in statutory period required for separation. *Mogensky v. Mogensky*, 212 Ark. 28, 204 S.W.2d 782 (1947); *Mohr v. Mohr*, 214 Ark. 607, 215 S.W.2d 1020 (1949).

Cited: *Parrish v. Parrish*, 195 Ark. 766, 114 S.W.2d 29 (1938); *Smith v. Smith*, 219 Ark. 278, 242 S.W.2d 350 (1951); *Oakes v. Oakes*, 219 Ark. 363, 242 S.W.2d 128 (1951); *Bishop v. Lucas*, 220 Ark. 871, 251 S.W.2d 126 (1952); *McIntire v. McIntire*, 270 Ark. 381, 605 S.W.2d 474 (1980).

9-12-302. Equitable proceedings.

The action for alimony or divorce shall be by equitable proceedings.

History. Civil Code, § 456; C. & M. Dig., § 3499; Pope's Dig., § 4380; A.S.A. 1947, § 34-1201.

CASE NOTES

ANALYSIS

In General.

Alimony.

Jurisdiction.

Mental Capacity.

In General.

A state of marriage can only be dissolved during the lives of the parties to the

marriage by annulment or by divorce. *Mabry v. Mabry*, 259 Ark. 622, 535 S.W.2d 824 (1976).

Alimony.

An independent action for alimony will lie. *Wood v. Wood*, 54 Ark. 172, 15 S.W. 459 (1891); *Shirey v. Hill*, 81 Ark. 137, 98 S.W. 731 (1906); *Kientz v. Kientz*, 104 Ark. 381, 149 S.W. 86 (1912); *Harmon v. Harmon*,

152 Ark. 129, 237 S.W. 1096 (1922); *Kesterson v. Kesterson*, 21 Ark. App. 287, 731 S.W.2d 786 (1987).

The chancery court and the Supreme Court on appeal had jurisdiction to award suit money and alimony to a wife notwithstanding a denial of a divorce to the husband. *Gabler v. Gabler*, 209 Ark. 459, 190 S.W.2d 975 (1945).

Enforcement of a contract for alimony is an action for alimony and not for debt, even though the obligation existed by reason of agreement between the parties. *McCue v. McCue*, 210 Ark. 826, 197 S.W.2d 938 (1946).

This section allows independent proceeding for the division of marital property or alimony when neither the division nor alimony could have been considered in the divorce action. *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985).

Income from a spendthrift trust can be reached by means of equitable garnish-

ment or other means to satisfy a judgment for an arrearage in alimony. *Council v. Owens*, 28 Ark. App. 49, 770 S.W.2d 193 (1989).

Jurisdiction.

The chancery court has exclusive jurisdiction of all cases involving matters of child support; neither the municipal nor circuit court has concurrent jurisdiction with chancery court to enforce an agreement for child support. *Boren v. Boren*, 318 Ark. 378, 885 S.W.2d 852 (1994).

Mental Capacity.

The mere fact that a man had been adjudged incompetent under Uniform Veterans Guardian Act and a guardian appointed for his estate did not affect his capacity to marry or sue for divorce. *Lovett v. Lovett*, 254 Ark. 349, 493 S.W.2d 435 (1973).

Cited: *Jackson v. Jackson*, 253 Ark. 1033, 490 S.W.2d 809 (1973).

9-12-303. Venue — Service of process.

(a) The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a resident of the state, in which case the proceedings shall be in the county where the defendant resides and, in any event, the process may be directed to any county in the state.

(b) In actions initiated by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or the Department of Human Services, proceedings may also be commenced in the county where the defendant resides.

(c) When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the venue for any of the three (3) named actions filed by the other spouse, regardless of the residency of the other spouse.

History. Rev. Stat., ch. 51, § 5; C. & M. Dig., § 3502; Pope's Dig., § 4383; Acts 1963, No. 190, § 1; 1979, No. 799, § 1;

A.S.A. 1947, § 34-1204; Acts 1987, No. 12, § 1; 1995, No. 1184, § 4.

RESEARCH REFERENCES

Ark. L. Rev. Clarification of Vacation Divorce Decrees on Constructive Service, 13 Ark. L. Rev. 345.

Grounds for Venue in Arkansas — A Survey, 25 Ark. L. Rev. 468.

Recent Developments, Child Support Decrees — Uniform Enforcement of For-

eign Judgments Act, *Mathews v. Mathews*, 59 Ark. L. Rev. 803.

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

CASE NOTES

ANALYSIS

Concurrent Venue Improper.
Cross-Complaint.
Foreign Jurisdiction.
Fraud.
Residence.
—In General.
—Duration.
—Evidence.
—Separate Domicile.
Waiver.

Concurrent Venue Improper.

Under subsection (c) of this section, where the initial action filed in Pulaski County was still pending on appeal when the second suit was filed in Saline County, Pulaski County was the county of proper venue, and the Saline County court erred in refusing to dismiss the action filed in that court. *Tortorich v. Tortorich*, 324 Ark. 128, 919 S.W.2d 213 (1996).

Cross-Complaint.

Where wife instituted suit in a county other than her county of residence, and husband, who resided in that county, filed a cross-complaint without questioning the jurisdiction of the court on the complaint, court was held to have acquired jurisdiction of the parties and subject matter of the suit under the cross-complaint. *Laird v. Laird*, 201 Ark. 483, 145 S.W.2d 27 (1940).

Foreign Jurisdiction.

The law will not presume that a husband invoked the aid of a foreign jurisdiction and obtained a divorce from the fact that he cohabited with another woman. *Orsburn v. Graves*, 213 Ark. 727, 210 S.W.2d 496 (1948) (decision prior to 1963 amendment).

Fraud.

Where complainant was not a resident of the county and constructive service was fraudulently attempted on the defendant, the court had no jurisdiction of the cause, and could not proceed on the original suit in an action by the defendant to vacate the decree. *Corney v. Corney*, 79 Ark. 289, 95 S.W. 135 (1906).

Where husband obtained a divorce decree in a county by fraudulently claiming that he was a resident of the county and

also fraudulently claiming that the defendant was a nonresident of Arkansas, the divorce decree was an absolute nullity and wife was entitled to bring a suit for support and maintenance in the county of her residence. *Cloman v. Cloman*, 229 Ark. 447, 316 S.W.2d 817 (1958).

Residence.

Trial court erred in dismissing the husband's complaint for divorce which he filed in the county where he resided before his wife filed, because the plain language of this section placed venue where the complainant resided and granted the venue determination to the first Arkansas resident to file. *Parker v. Parker*, 2013 Ark. 236 (2013).

—In General.

This section contemplates actual residence. *Vanness v. Vanness*, 128 Ark. 543, 194 S.W. 498 (1917).

The court was without jurisdiction when evidence showed that residence was acquired solely for the purpose of obtaining a divorce. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936); *Allen v. Allen*, 211 Ark. 335, 200 S.W.2d 324 (1947).

The provisions of this law may be availed only by one who actually and in good faith became and was a resident of this state for the period of time prescribed by this section, but the actual residence, once established, is not lost by temporary absence from the state. *Tarr v. Tarr*, 207 Ark. 622, 182 S.W.2d 348 (1944).

In suit based on three-years' (now 18 months') separation plaintiff did not establish a bona fide domicile in Arkansas where evidence showed that in prior litigation it had been determined by courts in other states that he had established a domicile in another state. *Smith v. Smith*, 219 Ark. 278, 242 S.W.2d 350 (1951).

There must be a bona fide intention to make county in which suit is filed the residence of the complainant. *Smith v. Smith*, 219 Ark. 876, 245 S.W.2d 207 (1952).

Residence under this section means domicile. *Smith v. Smith*, 219 Ark. 876, 245 S.W.2d 207 (1952).

Regardless of the defendant spouse's residence, once a plaintiff spouse has filed

for (1) absolute divorce, (2) limited divorce, or (3) separate maintenance, the defendant spouse can no longer go to a different court (division or county) to file any one of the 3 named marital-related actions, but must file any new marital cause of action in the same action the plaintiff spouse has already initiated. *Tortorich v. Tortorich*, 333 Ark. 15, 968 S.W.2d 53 (1998).

—Duration.

No certain length of time is necessary to fix the residence contemplated by this statute, but it must be such, with the attendant circumstances surrounding its acquirement, as to manifest a bona fide intention of making it a fixed and permanent place of abode. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936).

The brevity of a wife's residence, of course, was relevant to her intention, but not controlling, in view of the fact that no particular length of time is required for the establishment of a domicile. *Moon v. Moon*, 265 Ark. 310, 578 S.W.2d 203 (1979).

No particular length of time is required for the establishment of a domicile, but there must be residence attended by such circumstances surrounding its acquirement as to manifest a bona fide intention of making it a fixed and permanent place of abode. *Moon v. Moon*, 265 Ark. 310, 578 S.W.2d 203 (1979); *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

—Evidence.

Evidence sustained the conclusion that husband's move from county where he

formerly resided to county where he instituted suit for divorce was not made in good faith. *Hillman v. Hillman*, 200 Ark. 340, 138 S.W.2d 1051 (1940).

Evidence was held to show that plaintiff, who went to another state, continued his residence in this state. *Morgan v. Morgan*, 202 Ark. 76, 148 S.W.2d 1078 (1941).

Evidence insufficient to establish that complainant was bona fide resident. *Barth v. Barth*, 204 Ark. 151, 161 S.W.2d 393 (1942).

Evidence sufficient to establish that complainant was resident. *Feldman v. Feldman*, 205 Ark. 544, 169 S.W.2d 866 (1943); *Cole v. Cole*, 233 Ark. 210, 343 S.W.2d 561 (1961); *Puterbaugh v. Puterbaugh*, 254 Ark. 61, 491 S.W.2d 386 (1973).

—Separate Domicile.

A wife may acquire a separate domicile from that of her husband and at that domicile she may institute proceedings for divorce. *McLaughlin v. McLaughlin*, 193 Ark. 207, 99 S.W.2d 571 (1936).

Trial court had jurisdiction of suit for divorce by wife based on three years' (now 18 months') separation, where wife left state for residence in sanatorium outside of state due to tuberculosis, since domicile was not changed by absence from state for purpose of benefiting health. *Oakes v. Oakes*, 219 Ark. 363, 242 S.W.2d 128 (1951).

Waiver.

Venue of an action may be waived. *Hargis v. Hargis*, 292 Ark. 487, 731 S.W.2d 198 (1987).

Cited: *Isely v. Isely*, 287 Ark. 401, 700 S.W.2d 49 (1985).

9-12-304. Pleadings — Interrogatories.

(a) The pleadings are not required to be verified by affidavit.

(b) However, either party may file interrogatories to the other in regard to any matter of property involved in the action that shall be answered on oath as interrogatories in other actions and have the same effect.

History. Civil Code, § 457; C. & M. Dig., § 3503; Pope's Dig., § 4384; A.S.A. 1947, § 34-1205.

9-12-305. No judgment pro confesso.

The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer or admission of their truth on the part of the defendant.

History. Civil Code, § 458; C. & M. Dig., § 3504; Pope's Dig., § 4385; A.S.A. 1947, § 34-1207.

RESEARCH REFERENCES

Ark. L. Rev. Clarification of Vacation Divorce Decrees on Constructive Service, 13 Ark. L. Rev. 345.

CASE NOTES

Purpose. In a contested divorce case the corroboration may be relatively slight since the purpose of the requirement is to prevent collusion. *Goodlett v. Goodlett*, 206 Ark. 1048, 178 S.W.2d 666 (1944); *Fitzgerald v. Fitzgerald*, 227 Ark. 1063, 303 S.W.2d 577 (1957); *Anderson v. Anderson*, 234 Ark. 379, 352 S.W.2d 369 (1961).
Cited: *Smiley v. Smiley*, 247 Ark. 933, 448 S.W.2d 642 (1970); *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

9-12-306. Corroboration.

- (a) In uncontested divorce suits, corroboration of the plaintiff's grounds for divorce shall not be necessary or required.
- (b) In contested suits, corroboration of the injured party's grounds may be expressly waived in writing by the other spouse.
- (c)(1) This section does not apply to proof as to residence, which must be corroborated, and does not apply to proof of separation and continuity of separation without cohabitation, which must be corroborated.
- (2) In uncontested cases, proof as to residence and proof of separation and continuity of separation without cohabitation may be corroborated by either oral testimony or verified affidavit of persons other than the parties.

History. Acts 1969, No. 398, § 1; 1981, No. 267, § 1; 1985, No. 474, § 1; A.S.A. 1947, § 34-1207.1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595. **Arkansas Law Survey,** Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

CASE NOTES

ANALYSIS

Contested Cases.

Residence.

Separation.

Stipulation or Waiver of Grounds.

Contested Cases.

Although this section removed the need for corroboration in uncontested divorce suits it did not remove the requirement in contested suits. *Adams v. Adams*, 252 Ark. 20, 477 S.W.2d 183 (1972).

In contested suit wife's testimony was not corroborated and she was therefore not entitled to a divorce. *Peter v. Peter*, 10 Ark. App. 292, 663 S.W.2d 744 (1984).

In contested cases where corroboration has not been waived but there is no intimation of collusion, the corroborating evidence of grounds for divorce may be relatively slight. *Gunnell v. Gunnell*, 30 Ark. App. 4, 780 S.W.2d 597 (1989).

Circuit court did not err by awarding the wife a divorce based on the ground of indignities under § 9-12-301(b)(3)(C), because the wife offered evidence of her husband's ongoing affair, rudeness, unmerited reproach, and studied neglect that amounted to "settled hate" rendering her condition in life intolerable. Evidence of his indignities was corroborated under this section by her mother who indicated that her husband was rude, inattentive, and did not care about her; additionally, his misuse of marital funds, purchase of diamonds, and hotel bills provided some inference that he was engaged in studied neglect, open insult, and alienation and estrangement. *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599 (2012).

Residence.

An issue of residence deals directly with the authority, power and right of the trial court to act and therefore, the corroborating evidence, although relatively slight, should not be speculative and vague in scope. *Hingle v. Hingle*, 264 Ark. 442, 572 S.W.2d 395 (1978).

Proof of residency held corroborated. *Rachel v. Rachel*, 294 Ark. 110, 741 S.W.2d 240 (1987).

Residency must be corroborated and proven in every instance, despite admission by a defendant. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

The purpose of the corroboration of residency rule is to prevent procurement of divorce by collusion, and when there is no collusion, the corroboration required is slight. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Proof of residency in a divorce action may not be dispensed with or supplied by the express and direct action of the parties, and it may not be supplied by their indirect actions through application of the doctrine of estoppel. *Araneda v. Araneda*, 48 Ark. App. 236, 894 S.W.2d 146 (1995).

Trial court had jurisdiction to grant a divorce as the necessary corroboration of the wife's residency was supplied by the wife's daughter, who testified that the wife had been a resident in the county for 9 or 10 years before filing for divorce and reiterated her previous testimony that the wife was a resident of the county for at least 3 months preceding the entry of the divorce decree. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Husband was ordered to file a substituted brief in his appeal to the supreme court in which he challenged the circuit court's jurisdiction to enter the divorce decree as he failed to abstract his wife's testimony pursuant to Ark. Sup. Ct. & Ct. App. R. 4-2 regarding the residency requirements of § 9-12-307(a)(1)(A) and subdivision (c)(1) of this section. *Roberts v. Roberts*, 2009 Ark. 306, 319 S.W.3d 234 (2009).

At the hearing on a divorce complaint filed in 2005, a witness testified that the wife had continuously resided in Pulaski County, Arkansas, from 1999 to 2006 for purposes of the residency requirement of § 9-12-307(a)(1)(A); because the wife provided corroborated proof under subdivision (c)(1) of this section, the circuit court had jurisdiction to enter the divorce decree. *Roberts v. Roberts*, 2009 Ark. 567, 349 S.W.3d 886 (2009).

Corroboration of a wife's residence in Arkansas by her adult daughter as required for divorce jurisdiction under § 9-12-307(a)(1)(A) was sufficient under subdivision (c)(1) of this section. *Freeman v. Freeman*, 2013 Ark. App. 693, 430 S.W.3d 824 (2013).

Separation.

Although subdivision (c)(1) of this section requires that proof of separation and

continuity of separation without cohabitation be corroborated, it relates only to those grounds found in § 9-12-301(b)(5) and (6) in which separation without cohabitation is an element, or cases in which cohabitation is an affirmative defense. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Stipulation or Waiver of Grounds.

Regardless of whether a divorce is contested or uncontested, the injured party must always prove his or her ground(s) for divorce; in other words, existing statutory law does not allow a spouse to stipulate to or waive grounds for divorce. *Harpole v. Harpole*, 10 Ark. App. 298, 664 S.W.2d 480 (1984).

Oral waiver made in open court and recorded by the reporter is as valid as though transcribed and executed. *Rachel v. Rachel*, 294 Ark. 110, 741 S.W.2d 240 (1987).

A judgment of divorce was reversed and the case was dismissed without prejudice where the plaintiff wife failed to corroborate her grounds for divorce and she also did not provide an expressed waiver of the requirement of corroboration. *Oates v. Oates*, 340 Ark. 431, 10 S.W.3d 861 (2000).

Cited: *Holden v. Holden*, 269 Ark. 850, 601 S.W.2d 247 (Ct. App. 1980); *Calhoun v. Calhoun*, 3 Ark. App. 270, 625 S.W.2d 545 (1981); *Price v. Price*, 29 Ark. App. 212, 780 S.W.2d 342 (1989).

9-12-307. Matters that must be proved — Definition.

(a) To obtain a divorce, the plaintiff must prove, but need not allege, in addition to a legal cause of divorce:

(1)(A) A residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce.

(B) No decree of divorce, however, shall be granted until at least thirty (30) days have elapsed from the date of the filing of the complaint.

(C) When personal service cannot be had upon the defendant or when the defendant fails to enter his or her appearance in the action, no decree of divorce shall be granted the plaintiff until the plaintiff has maintained an actual residence in the State of Arkansas for a period of not less than three (3) full months;

(2) That the cause of action and cause of divorce occurred or existed in this state or, if out of the state, that it was a legal cause of divorce in this state, the laws of this state to govern exclusively and independently of the laws of any other state as to the cause of divorce; and

(3) That the cause of divorce occurred or existed within five (5) years next before the commencement of the suit.

(b) "Residence" as used in subsection (a) of this section is defined to mean actual presence, and upon proof of that the party alleging and offering the proof shall be considered domiciled in the state, and this is declared to be the legislative intent and public policy of the State of Arkansas.

History. Civil Code, § 459; C. & M. Dig., § 3505; Acts 1931, No. 71, p. 201; Pope's Dig., § 4386; Acts 1957, No. 36;

1961, No. 146; A.S.A. 1947, §§ 34-1208, 34-1208.1; Acts 1993, No. 418, § 1; 1999, No. 97, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Conflict of Laws, 3 Ark. L. Rev. 20, 29.

Conflict of Laws and Family Law, 14 Ark. L. Rev. 47.

CASE NOTES

ANALYSIS

Constitutionality.

Construction.

Purpose.

Cause Arising Outside State.

Months.

Notice.

Residence.

—In General.

—Appearance.

—Evidence.

—Military Service.

Time of Cause.

Constitutionality.

Subsection (b) of this section does not violate the full faith and credit clause or the due process clause of the federal Constitution. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

Construction.

As used in subdivision (a)(1)(A) of this section, "before" is defined as preceding; while "next" is defined as adjoining in a series: immediately preceding or following in order. With these definitions in mind and applying them to the instant legislation, it is clear that the General Assembly intended that a divorce plaintiff must prove residence in the state by either the plaintiff or defendant for sixty days immediately preceding, or next before, the filing of a complaint for divorce and, in addition, residence in the state for three full months preceding, or before, the entry of the divorce decree. *Roberts v. Roberts*, 2009 Ark. 567, 349 S.W.3d 886 (2009).

Purpose.

Subsection (b) of this section substitutes a simple requirement of residence, which can be proved with certainty, for the nebulous concept of domicile, which usually cannot be proved. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

Subsection (b) of this section was intended to restore the rule of *Squire v. Squire*, 186 Ark. 511, 54 S.W.2d 281 (1932), that only residence, not domicile,

is required under this section. *Wheat v. Wheat*, 229 Ark. 842, 318 S.W.2d 793 (1958).

Cause Arising Outside State.

Although desertion had not continued for necessary period to obtain divorce under laws of state where desertion first occurred, where plaintiff had in good faith moved to this state after desertion, and desertion continued after the required residence period elapsed, divorce could be granted. *Mullenband v. Mullenband*, 137 Ark. 505, 208 S.W. 801 (1919).

Months.

Where this statute says months, it means calendar months. *Parseghian v. Parseghian*, 206 Ark. 869, 178 S.W.2d 49 (1944).

Notice.

One spouse should not come into this state and obtain a divorce under this act without seeing to it that the nonresident spouse receives a notice of the pendency of the divorce suit in time to appear and defend the case if he or she desires to do so. *Stinson v. Stinson*, 203 Ark. 888, 159 S.W.2d 446 (1942).

Residence.

Trial court had jurisdiction to grant a divorce as the necessary corroboration of the wife's residency was supplied by the wife's daughter, who testified that the wife had been a resident in the county for 9 or 10 years before filing for divorce and reiterated her previous testimony that the wife was a resident of the county for at least 3 months preceding the entry of the divorce decree. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Husband was ordered to file a substituted brief in his appeal to the supreme court in which he challenged the circuit court's jurisdiction to enter the divorce decree as he failed to abstract his wife's testimony pursuant to Ark. Sup. Ct. & Ct. App. R. 4-2 regarding the residency requirements of subdivision (a)(1)(A) of this section and § 9-12-306(c)(1). *Roberts v.*

Roberts, 2009 Ark. 306, 319 S.W.3d 234 (2009).

At the hearing on a divorce complaint filed in 2005, a witness testified that the wife had continuously resided in Pulaski County, Arkansas, from 1999 to 2006; because the wife provided sufficient proof of the residency requirement of subdivision (a)(1)(A) of this section, the circuit court had jurisdiction to enter the divorce decree. *Roberts v. Roberts*, 2009 Ark. 567, 349 S.W.3d 886 (2009).

Corroboration of a wife's residence in Arkansas by her adult daughter as required for divorce jurisdiction under subdivision (a)(1)(A) of this section was sufficient under § 9-12-306(c)(1). *Freeman v. Freeman*, 2013 Ark. App. 693, 430 S.W.3d 824 (2013).

—In General.

Residence for the required period in this state is jurisdictional. *Parseghian v. Parseghian*, 206 Ark. 869, 178 S.W.2d 49 (1944); *Porter v. Porter*, 209 Ark. 371, 195 S.W.2d 53 (1945); *Troillet v. Troillet*, 227 Ark. 624, 300 S.W.2d 273 (1957).

Domicile or residence is sufficient for jurisdiction in divorce cases. *Weaver v. Weaver*, 231 Ark. 341, 329 S.W.2d 422 (1959).

The purpose of the corroboration of residency rule is to prevent procurement of divorce by collusion, and when there is no collusion, the corroboration required is slight. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Residency must be corroborated and proven in every instance, despite admission by a defendant. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Circuit court had jurisdiction over the parties' divorce because it was clear that the mother had abandoned her domicile in Arizona, had no intention of returning to Arizona, and intended to make Arkansas her new domicile, and thus, she was domiciled in Arkansas. *Adams v. Adams*, 2014 Ark. App. 67, 432 S.W.3d 49 (2014).

—Appearance.

Wife's appearance before court did not confer jurisdiction upon the court if jurisdiction did not otherwise exist. *Kennedy v. Kennedy*, 205 Ark. 650, 169 S.W.2d 876 (1943).

Wife could not file petition to set aside decree on the ground that husband was

not a resident of county when decree was entered where she had filed a waiver and secured an attorney who represented her at trial and from which no appeal was taken. *Anderson v. Anderson*, 223 Ark. 571, 267 S.W.2d 316 (1954).

—Evidence.

Evidence insufficient to find residence requirement for jurisdiction purposes under this section was complied with. *Carlson v. Carlson*, 198 Ark. 231, 128 S.W.2d 242 (1939); *Gilmore v. Gilmore*, 204 Ark. 643, 164 S.W.2d 446 (1942); *Cassen v. Cassen*, 211 Ark. 582, 201 S.W.2d 585 (1947); *Walters v. Walters*, 213 Ark. 497, 211 S.W.2d 110 (1948); *Stimmel v. Stimmel*, 218 Ark. 293, 235 S.W.2d 959 (1951); *May v. May*, 221 Ark. 585, 254 S.W.2d 957 (1953); *Troillet v. Troillet*, 227 Ark. 624, 300 S.W.2d 273 (1957); *Graham v. Graham*, 254 Ark. 646, 495 S.W.2d 144 (1973).

Residence in the state for two months before filing suit for divorce and for one month thereafter before the rendition of the decree is sufficient under this statute. *Brickey v. Brickey*, 205 Ark. 373, 168 S.W.2d 845 (1943).

Evidence sufficient to find that residence requirement for jurisdiction purposes under this section was complied with. *Buck v. Buck*, 205 Ark. 918, 171 S.W.2d 939 (1943); *Young v. Young*, 207 Ark. 36, 178 S.W.2d 994 (1944); *Birnstill v. Birnstill*, 218 Ark. 130, 234 S.W.2d 757 (1950); *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

—Military Service.

A soldier stationed in this state must have a residence in the state, apart from the military service, for a period of two months before filing a suit for divorce. *Kennedy v. Kennedy*, 205 Ark. 650, 169 S.W.2d 876 (1943).

Constitutional provision that no soldier, sailor or marine shall acquire residence by reason of being stationed on duty in the state, means that he may not acquire residence from mere fact of being stationed in the state, but, apart from that service, he must have a residence in the state for a period of two months before filing a suit for divorce. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

Army officer held not to have established a residence in Arkansas. *Mohr v. Mohr*, 206 Ark. 1094, 178 S.W.2d 502 (1944).

Time of Cause.

Action for divorce may be maintained more than five years after desertion by offending party since desertion is continuing in its nature. *Poe v. Poe*, 125 Ark. 391, 188 S.W. 1190 (1916).

Evidence was sufficient to show that cause of divorce occurred up to and after the separation which took place one month before suit for divorce. *James v. James*, 211 Ark. 531, 201 S.W.2d 14 (1947).

Evidence as to occurrences prior to five years before commencement of suit was admissible where its purpose was to show who was the injured party under the three

year separation statute (now 18 months separation). *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781 (1957).

Cause of divorce occurring five years prior to the filing of defendant's complaint for divorce did not make the granting of a divorce to plaintiff erroneous where there was evidence of other causes. *Alston v. Alston*, 242 Ark. 804, 415 S.W.2d 578 (1967).

Cited: *Hensley v. Hensley*, 213 Ark. 755, 212 S.W.2d 551 (1948); *Peugh v. Olinger*, 233 Ark. 281, 345 S.W.2d 610 (1961); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Stewart v. Stewart*, 16 Ark. App. 164, 698 S.W.2d 516 (1985).

9-12-308. Effect of collusion, consent, or equal guilt of parties.

If it appears to the court that the adultery or other offense complained of has been occasioned by the collusion of the parties or done with an intent to procure a divorce, that the complainant was consenting thereto, or that both parties have been guilty of the adultery or other offense or injury complained of in the complaint, then no divorce shall be granted or decreed.

History. Rev. Stat., ch. 51, § 8; C. & M. Dig., § 3507; Pope's Dig., § 4389; A.S.A. 1947, § 34-1209.

Cross References. Condonation abolished, see § 9-12-325.

CASE NOTES**ANALYSIS**

Collusion.
Fault of Parties.

Collusion.

Where both parties are guilty of collusion and fraud on the court, both parties are precluded from relief of any kind connected with a divorce decree. *Oberstein v. Oberstein*, 217 Ark. 80, 228 S.W.2d 615 (1950).

Fault of Parties.

No relief will be afforded to either party if the testimony discloses that they are equally in fault. *Cate v. Cate*, 53 Ark. 484, 14 S.W. 675 (1890); *McCollum v. McCollum*, 227 Ark. 735, 301 S.W.2d 565 (1957).

The court has discretion in an action wherein both parties ask for absolute divorce to grant a divorce from bed and board to the party least at fault, although neither party is entirely blameless. *Crews v. Crews*, 68 Ark. 158, 56 S.W. 778 (1900).

Husband was not entitled to divorce for cause alleged in complaint where he was guilty of adultery. *Evans v. Evans*, 219 Ark. 325, 241 S.W.2d 713 (1951).

Since it appeared to the court that both parties seeking a divorce were guilty of adultery, the decree granting a divorce must be reversed. *Moore v. Moore*, 230 Ark. 213, 322 S.W.2d 77 (1959).

Cited: *In re Thomas*, 331 B.R. 798 (Bankr. W.D. Ark. 2005).

9-12-309. Maintenance and attorney's fees — Interest.

(a)(1) During the pendency of an action for divorce, whether absolute or from bed and board, separate maintenance, or alimony, the court may:

- (A)(i) Allow to the wife or to the husband maintenance;
- (ii) Allow a reasonable fee for his or her attorneys; and
- (iii) Allow expert witness fees; and

(B) Enforce the payment of the allowance by orders and executions and proceedings as in cases of contempt.

(2) In the final decree of an action for absolute divorce, the court may award the wife or husband costs of court, a reasonable attorney's fee, and expert witness fees.

(3) The court may immediately reduce the sums so ordered to judgment and allow the party to execute upon the marital property for the payment of the allowance, except that the homestead shall not be executed upon for the payment of the sums so ordered.

(b) The court may allow either party additional attorney's fees for the enforcement of alimony, maintenance, and support provided for in the decree.

(c) All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum.

(d) The court shall award a minimum of ten percent (10%) of the support amount due as attorney's fees in actions for the enforcement of payment of alimony, maintenance, and support provided for in the decree, judgment, or order.

(e) Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

History. Civil Code, § 460; C. & M. 1979, No. 705, § 2; 1983, No. 161, § 1; Dig., § 3506; Pope's Dig., § 4388; Acts A.S.A. 1947, § 34-1210; Acts 1987, No. 1941, No. 25, § 1; 1945, No. 274, § 1; 813, § 1; 2001, No. 207, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Insanity Procedure in Cases of Contempt for Default in Family Support Payments, 5 Ark. L. Rev. 361.

Taxability of Attorneys' Fees as Costs, 9 Ark. L. Rev. 70.

Support — Alimony, Suit Money and Property Settlement, 14 Ark. L. Rev. 61.

Note, A Secured Party's Right to Recover Attorney's Fees and Expenses: *Svestka v. First National Bank in Stuttgart*, 35 Ark. L. Rev. 579.

U. Ark. Little Rock L.J. Hawthorne, Note: Family Law — Divorce — Constitutionality of Arkansas Property Settlement and Alimony Statutes, 2 U. Ark. Little Rock L.J. 123.

Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Note, Constitutional Law — Equal Protection — Arkansas' Gender-Based Statutes on Dower, Election, Statutory Allowances, and Homestead Are Unconstitutional, *Hess v. Wims*; *Stokes v. Stokes*, 4 U. Ark. Little Rock L.J. 361.

Legislation of the 1983 General Assembly, Family Law, 6 U. Ark. Little Rock L.J. 624.

Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Applicability.

Amount of Allowance.

Appeal.

Attorney's Fees.

Child Custody Proceedings.

Costs and Expenses.

Discretion of Court.

Enforcement.

Marital Property.

Minors.

Modification.

Setting Aside.

Showing of Merit.

Note. — Some of the following cases were decided prior to the 1979 amendment to this section that made maintenance, etc., available to the husband as well as the wife in divorce proceedings.

Constitutionality.

A husband's liability for the attorney's fee of his wife in a divorce suit is statutory and not a debt by contract within Ark. Const., Art. 9, § 1, exempting personality of an unmarried person as against debts by contract. *Walker v. Walker*, 148 Ark. 170, 229 S.W. 11 (1921).

Where this section (prior to its 1979 amendment) granted rights to temporary alimony, maintenance and attorney's fees only to wives and not to husbands, this section contained a gender-based classification which, as compared to a gender-neutral one, generated additional benefits only for those it had no reason to prefer, and therefore, this section was unconstitutional as a violation of the equal protection clauses of the United States and Arkansas Constitutions. *Hatcher v. Hatcher*, 265 Ark. 681, 580 S.W.2d 475 (1979) (decision prior to 1979 amendment).

In General.

In a suit for divorce, a chancellor has power to award alimony pendente lite to the wife; in the absence of any proof of separate property in the wife, it is just and reasonable to compel the husband to furnish the means for her to prosecute or

defend the suit and with necessities suitable to her station in society and his means. *Glenn v. Glenn*, 44 Ark. 46 (1884).

A husband may not defeat his wife's right to support during the pendency of her divorce action by offering to return to the home and support her. *Womack v. Womack*, 247 Ark. 1130, 449 S.W.2d 399 (1970).

Trial court properly considered the factors to be used in determining an award of alimony and properly found that the ex-wife was entitled to a lifetime award where (1) she remained at home throughout the majority of her 25-year marriage; (2) she had not worked for the past 20 years, ever since the parties' child was born; (3) her only employment experience came from jobs paying at or slightly more than minimum wage; (4) she did not have a college degree and she did not think she had the skills to return to college at her age; and (5) the husband had the ability to pay the alimony award. *Hiatt v. Hiatt*, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

Sufficient evidence supported the trial judge's findings that the relationship between the wife and her boyfriend was not one of sharing economic responsibility, and that he was neither a member of her household nor a member of her family; the boyfriend and wife had no joint bank accounts, credit cards, or other financial holdings, obligations, or ties, and whether or not they were romantically involved was not determinative of whether termination of alimony was appropriate. *Gibson v. Gibson*, 87 Ark. App. 62, 185 S.W.3d 122 (2004).

Increase in alimony to wife was proper as wife proved a material change in circumstances; her diagnosis of rheumatoid arthritis affected her ability to supplement her income as she had done in the past by being a massage therapist and limited her potential employment in other fields. *Weeks v. Wilson*, 95 Ark. App. 88, 234 S.W.3d 333 (2006).

Applicability.

Where a petition is filed to set aside a default decree obtained on constructive service alleging that the decree was procured by fraud, the court may allow the defendant temporary alimony and attor-

ney's fees. *Stewart v. Stewart*, 101 Ark. 86, 141 S.W. 193 (1911).

An action to vacate a divorce decree is not governed by this section. *Floyd v. Isbell*, 211 Ark. 631, 201 S.W.2d 755 (1947).

Acts 1979, No. 705, which amended this section to make it gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Amount of Allowance.

A court of chancery in estimating the allowance to be made the wife, pendente lite, on a bill for divorce, will take into consideration her expenses to be incurred during the progress of the suit; where an allowance has been made for her, it will be presumed that her counsel's fee was considered in fixing the amount. *Bauman v. Bauman*, 18 Ark. 320 (1857).

In a separate maintenance suit award for support of wife as temporary allowance was reduced. *McGuire v. McGuire*, 231 Ark. 613, 331 S.W.2d 257 (1960).

Trial court did not abuse its discretion in refusing to allow plaintiff more money for alimony and attorney's fees pending further litigation since the allowances made were only temporary and there was no way of knowing pending a full and final hearing the needs of plaintiff or the financial status of defendant. *Yohe v. Yohe*, 238 Ark. 642, 383 S.W.2d 665 (1964).

Attorney's fees of \$8,000 awarded in child custody modification action under the authority of subsection (a) of this section. *Jones v. Jones*, 327 Ark. 195, 938 S.W.2d 228 (1997).

In a divorce case, the trial court did not err by ordering former husband to pay former wife \$100 per month in alimony because the evidence showed that he had the ability to pay, he was not responsible for child support after the child's graduation from high school, and the child's college expenses were not considered; moreover, husband's arguments concerning wife's decision to move and her accountability for her financial situation were rejected. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006).

Trial court abused its discretion in ordering husband to pay wife alimony in the

amount of \$250 per week for six months from the date of the divorce decree where the wife's needs far outweighed the husband's ability to provide alimony for six months; the wife, who was unemployed but seeking employment, had no assets, other than those awarded by the trial court, upon which to rely for support. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

In a divorce action, an alimony award to a former wife was proper when the wife chose to home-school two minor children, was a stay at home mother under an agreement between the parties, and had no marketable skills or meaningful employment history. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

Appeal.

An appeal from an order for ad interim alimony may be taken immediately. *Casteel v. Casteel*, 38 Ark. 477 (1882).

A decree for alimony pendente lite is a final decree which is appealable. *Glenn v. Glenn*, 44 Ark. 46 (1884).

As incident to its appellate jurisdiction, the Supreme Court has power pending an appeal in a divorce suit to make an order allowing a wife costs and suit money. In re *Smith*, 183 Ark. 1025, 39 S.W.2d 703 (1931).

Husband in appeal from divorce action has no standing to raise any question about the constitutionality of allowing alimony and attorney's fees where no allowance was made. *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

Attorney's Fees.

Attorney's fees allowed. *Stearns v. Stearns*, 211 Ark. 568, 201 S.W.2d 753 (1947); *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961); *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962); *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965); *Grumbles v. Grumbles*, 245 Ark. 77, 431 S.W.2d 241 (1968); *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Attorney's fees not allowed. *Warren v. Warren*, 215 Ark. 567, 221 S.W.2d 407 (1949).

Order of court requiring plaintiff to deposit a stated sum for attorney's fees and expenses of wife in the defense of action before wife was required to plead was within court's discretion. *Goynes v. Goynes*, 231 Ark. 47, 328 S.W.2d 258 (1959).

Awarding of attorney's fees was a matter for the sound discretion of the trial court. Where evidence supported it, it was not an abuse of discretion for the trial court to award attorneys' fee. *Goodloe v. Goodloe*, 253 Ark. 550, 487 S.W.2d 593 (1972).

Attorney's fees were not awarded under this section as a matter of right, the granting or denial of the fees being within the sound discretion of the chancellor; evidence sufficient to find that chancellor did not abuse his discretion in refusing to award fees. *Ryan v. Baxter*, 253 Ark. 821, 489 S.W.2d 241 (1973).

During the pendency of an action for an absolute divorce or a limited one, the chancery court has the authority to allow attorney's fees to either spouse upon a showing of circumstances warranting it. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Chancellor had authority under this section to grant attorney's fees to either party where the circumstances warranted the relief; wife's amendment to her complaint eliminating her prayer for divorce did not deprive the court of its authority with respect to attorney's fees on the husband's pending cross-complaint for divorce. *Paulson v. Paulson*, 8 Ark. App. 306, 652 S.W.2d 46 (1983).

Disparity of the parties' respective incomes, while relevant, cannot alone justify an award of attorney's fees. *Scroggins v. Scroggins*, 302 Ark. 362, 790 S.W.2d 157 (1990).

The chancellor did not abuse his discretion by declining to award wife attorney's fees and costs, despite her claim of disparity in the parties' incomes and ability to pay these amounts. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

The chancellor abused her discretion in awarding attorney's fees to a wife where (1) the case involved a marriage of more than 30 years and complex property-division issues, and the chancellor herself had a crowded docket that complicated timely scheduling of ample hearing time to address all of the property-division issues, (2) the grounds upon which the divorce was granted, 18 months' separation of the parties, did not accrue until just days before the final hearing, and (3) the chancellor awarded each party an equal share of the marital property despite the fact that the husband was retired and was

living on a pension that was less than half of the wife's income. *Jablonski v. Jablonski*, 71 Ark. App. 33, 25 S.W.3d 433 (2000).

Trial court did not abuse its discretion in awarding mother attorney's fees of \$1,000 where father was in contempt of court for making child support payments payable to the minor children rather than to the mother, for failing to make child support payments in a timely fashion, for failing to pay drug and dental expenses, and for failing to furnish mother with the required copies of his W2 and 1099 tax forms. *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006).

In a domestic relations case, the trial court appropriately granted an ex-wife's motion for attorney's fees pursuant to § 16-22-308 and this section, because her ex-husband, in challenging the attorney's fee award, offered only his own reasoning and the language of the statutes in support of his argument; he cited no legal authority in support of his position, which was a sufficient reason to affirm the trial court's ruling. *Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

Given the trial court's great discretion as to the issuance of an attorney's fee award in alimony cases, the trial court properly awarded the wife attorney's fees and expenses under subsection (b) of this section, since the evidence supported the finding that a substantial change in circumstances, particularly the husband's ability to pay and the wife's need, existed to modify the parties' divorce decree to continue and increase the wife's alimony. *Bettis v. Bettis*, 100 Ark. App. 295, 267 S.W.3d 646 (2007).

In a divorce and custody matter, the trial court did not abuse its discretion in its award of attorney's fees to the mother where the father earned over twice as much as the mother earned. *Poole v. Poole*, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

On appeal from a divorce decree, considering the disparity in the parties' income, there was no abuse of discretion in the trial court's award of \$2,000 in attorney's fees to the wife under subdivision (a)(2) of this section. *Page v. Page*, 2010 Ark. App. 188, 373 S.W.3d 408 (2010).

Trial court did not abuse its discretion in awarding a wife a partial attorney's fee of \$12,000 given that the husband had paid his attorneys mainly in cash from the

account of the marital business, that the award to the wife was less than half the amount that the husband expended from the marital-business account, and that there was income and earning power disparity between the husband and wife. *Wright v. Wright*, 2010 Ark. App. 250, 377 S.W.3d 369 (2010).

In dissolution proceedings, a trial court did not abuse its discretion in not awarding attorney's fees and costs to a wife, pursuant to subdivision (a)(2) of this section, because even though the husband had considerably more assets than the wife, she also had considerable assets; the wife's net worth at the time of the divorce was \$600,050, and the wife received \$500,000 in marital property and \$155,000 in alimony for five years. *Barnes v. Barnes*, 2010 Ark. App. 822, 378 S.W.3d 766 (2010).

Circuit court did not abuse its discretion by awarding attorney's fees to a mother, pursuant to subsection (b) of this section, for having to respond to a father's motions for reconsideration regarding modification of child support obligations because of the economic disparity between the parties and the father's former counsel was familiar with the arguments and issues presented to the circuit court while new counsel was not; the father changed attorneys after the matter was tried but before the order was entered. *McDougal v. McDougal*, 2011 Ark. App. 13, 378 S.W.3d 813 (2011).

Where the wife was granted a divorce based on indignities, the circuit court abused its discretion by awarding her \$11,376.12 in attorney's fees under this section because she did not file an affidavit for attorney's fees, she failed to mention the requested expenses in the decree, and the amount awarded was in excess of the amount sought. *Coker v. Coker*, 2012 Ark. 383, 423 S.W.3d 599 (2012).

Issue of attorney's fees had to be viewed in light of the alimony and property distribution issues in order to determine whether the circuit court achieved a fair and equitable result; the ex-wife received permanent alimony and an equal share of the substantial marital property, and it was equitable and within the circuit court's broad discretion to order each party to pay for their own attorney's fees. *Webb v. Webb*, 2014 Ark. App. 697, 450 S.W.3d 265 (2014).

Circuit court did not abuse its discretion by awarding attorney's fees and litigation-related expenses to the wife; the billing statement did not include fees for work the wife's attorney did in connection with the divorce hearing, post-hearing briefing, or preparation of the proposed order. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

Circuit court did not err in awarding an ex-wife attorney's fees for services rendered in a dispute regarding the proper amount of child support due by the ex-husband under the parties' divorce decree because it had the inherent authority in domestic-relations proceedings to award attorney's fees independent of the statute. *Hudson v. Hudson*, 2018 Ark. App. 379, 555 S.W.3d 902 (2018).

Trial court had evidence of the relative financial abilities of the parties and did not abuse its discretion in awarding \$10,800 in attorney's fees to the wife; in part, the trial court was familiar with the protracted nature of the litigation, which included contempt motions against the husband, there was evidence that the wife was a substitute teacher and was also taking college courses, and there was evidence of the husband's income from the temporary hearing. *Deline v. Deline*, 2019 Ark. App. 562, 591 S.W.3d 365 (2019).

Child Custody Proceedings.

Where petition for modification of divorce decree relates only to child custody, the allowance of attorney's fees is within the sound judicial discretion of the court. *Finkbeiner v. Finkbeiner*, 226 Ark. 165, 288 S.W.2d 586 (1956).

Where father brought suit against ex-wife for contempt with regard to her actions in violating a custody agreement by secreting their child outside the jurisdiction of the Arkansas Chancery Court, award of attorney's fees incurred in the contempt proceeding, even though such a proceeding is not specifically included in this section is proper, since the chancery court had the inherent power and jurisdiction to do so in an equity proceeding. *Payne v. White*, 1 Ark. App. 271, 614 S.W.2d 684 (1981).

Costs and Expenses.

Circuit court did not err by awarding litigation-related expenses, such as court-reporter fees and postage, in addition to

attorney's fees; Ark. R. Civ. P. 54(d)(2) states that other expenses specifically authorized by statute are allowed, and subdivision (a)(2) of this section provides that in a divorce action, the circuit court may award either the wife or the husband costs of court, in addition to a reasonable attorney's fee. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

Discretion of Court.

Grant of alimony, maintenance, attorney's fees, etc., is within sound discretion of trial court and will not be disturbed on appeal absent an abuse of discretion. *Gladfelter v. Gladfelter*, 205 Ark. 1019, 172 S.W.2d 246 (1943); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *McGuire v. McGuire*, 231 Ark. 613, 331 S.W.2d 257 (1960); *Johnson v. Johnson*, 240 Ark. 657, 401 S.W.2d 213 (1966).

In a separate maintenance and custody suit in which the wife was unsuccessful, it was within the court's discretion to deny the wife's request for attorney's fees. *Tilley v. Tilley*, 210 Ark. 850, 198 S.W.2d 168 (1946).

Trial court did not abuse its discretion in denying wife's motion for costs, maintenance, and attorney's fees where she failed to obey order of court. *Relbstein v. Relbstein*, 220 Ark. 783, 249 S.W.2d 847 (1952).

The questions of the allowance of alimony, attorney's fees and suit money to a wife pending a husband's divorce action are within the sound discretion of the court where commensurate with the husband's ability and duty to pay and the wife's needs, except that it must give a decree for alimony under a properly certified and authenticated copy of a decree of another state. *Kearney v. Kearney*, 224 Ark. 484, 274 S.W.2d 779 (1955).

An award of attorney's fees is within the discretion of the trial court in a divorce case and will not be reversed absent an abuse of discretion. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Order that husband pay wife's attorney's fees in a divorce case upheld where chancellor determined that the husband was in a much better financial position. *Anderson v. Anderson*, 60 Ark. App. 221, 963 S.W.2d 604 (1998).

Trial court's decrease in husband's alimony payments was proper even though husband indicated that the relief was not

great enough as, given that the trial court's findings indicated it looked at the wife's needs and the husband's ability to pay, the trial court did not abuse its discretion in reducing the obligation by only 30%. *Valetutti v. Valetutti*, 95 Ark. App. 83, 234 S.W.3d 338 (2006).

Enforcement.

Courts of chancery have jurisdiction to enforce payment of alimony by all means by which courts usually compel obedience, including dismissal of complaint for disobedience to the order. *Casteel v. Casteel*, 38 Ark. 477 (1882).

This section and § 9-12-313 provides adequate remedy for the enforcement of decrees for alimony and maintenance. *East v. East*, 148 Ark. 143, 229 S.W. 5 (1921).

A final decree granting a divorce supersedes an order for temporary alimony. *Tracy v. Tracy*, 184 Ark. 832, 43 S.W.2d 539 (1931); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953).

Where husband filed notice of appeal from trial judge's order in divorce proceeding and wife filed notice of cross-appeal but neither party filed supersedeas bond, trial court had not lost jurisdiction and could enforce order by contempt proceeding. *Kearney v. Butt*, 224 Ark. 94, 271 S.W.2d 771 (1954).

Husband was not guilty of contempt for refusing to pay monthly payments he had been ordered to pay for maintenance resulting from prior proceedings in which no divorce had been requested after the husband was granted a divorce in proceedings in which the wife was not personally served. *Smith v. Smith*, 236 Ark. 141, 365 S.W.2d 247 (1963).

Trial court was ordered to enforce the original alimony award of \$350 per month for 12 months, plus a \$5,000 lump sum, because the original chancellor had the authority to enforce that alimony award; those sums accrued prior to the entry of the decree in the instant case and were therefore not subject to modification. *Rogers v. Rogers*, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Marital Property.

Where trial court had entered a temporary order pursuant to this section, and that order did not deal with or affect the distribution of the parties' properties, § 9-

12-315(b)(3) was not applicable. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Trial court did not purport to divide any future, non-vested employment benefits pursuant to the divorce decree but, rather, based the award of future alimony on a percentage of the ex-husband's net income, including any bonuses or stock options that the husband received in the future as part of the definition of his net income; thus, it was not error for the trial court to include stock options that might be exercised by the husband in the future as part of his net income for alimony purposes, given that all sources of income had to be considered in determining alimony. *Hiett v. Hiatt*, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

Minors.

In an action by an infant husband, brought by his guardian and parent to annul a marriage with another infant, a judgment cannot be rendered against the guardian and parent for alimony. *Erwin v. Erwin*, 120 Ark. 581, 180 S.W. 186 (1915).

Modification.

Modification of alimony was warranted where a wife's income and education level had increased, she was able to afford a nice home and automobiles, she received \$400,000 in assets from the property distribution, and she was only supporting one child. *Parker v. Parker*, 97 Ark. App. 298, 248 S.W.3d 523 (2007).

Setting Aside.

Where a wife brought suit for divorce, a temporary order allowing her alimony, attorney's fees, and cost money may be set aside at a subsequent term of court. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

Showing of Merit.

In a proceeding for divorce, where the plaintiff applies for alimony pendente lite and an allowance for attorney's fees, she must make some showing of merit by affidavit or otherwise, if the allegations of her complaint are denied by the answer supported by the affidavits of witnesses. *Countz v. Countz*, 30 Ark. 73 (1875).

The wife must make a showing of merit before the court will allow temporary alimony and suit money. *Slocum v. Slocum*, 86 Ark. 469, 111 S.W. 806 (1908).

Cohabitation that occurred during misconduct of spouse and prior to separation

of the parties is not an available defense to ad interim allowances under this section. *Brabham v. Brabham*, 240 Ark. 172, 398 S.W.2d 514 (1966).

Trial court did not err in awarding a wife \$1 per year in alimony because she received over \$1 million in assets, with a substantial amount of cash. *Cummings v. Cummings*, 104 Ark. App. 315, 292 S.W.3d 819 (2009).

Order awarding a wife alimony in the amount of \$1,500 per month in a divorce action was proper because the trial court considered the proper factors, including the wife's significant health problems impacting her ability to earn an income; the husband's good health; the likelihood that the husband would continue working until retirement age; and the husband's 2007 projected gross earnings. *Jackson v. Jackson*, 2009 Ark. App. 238, 303 S.W.3d 460 (2009).

Trial court properly denied a wife's request for alimony in a divorce action because there was evidence introduced showing that, while the wife arguably had a need for alimony, the husband's financial situation was not as robust as his salary alone would indicate; the husband still maintained a house payment and car payments for himself and the children while the wife, pursuant to an agreed upon property division, had no debt, no house payment, and no car payment. *Whitworth v. Whitworth*, 2009 Ark. App. 410, 319 S.W.3d 269 (2009).

Trial court did not err under subdivision (a)(2) of this section in awarding attorney's fees to a wife in a divorce action because the husband's financial position was stronger. *Delgado v. Delgado*, 2012 Ark. App. 100, 389 S.W.3d 52 (2012).

Cited: *Kuespert v. Roland*, 222 Ark. 153, 257 S.W.2d 562 (1953); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Stokes v. Stokes*, 271 Ark. 300, 613 S.W.2d 372 (1981); *Russell v. International Paper Co.*, 2 Ark. App. 355, 621 S.W.2d 867 (1981); *Elkins v. Coulson*, 293 Ark. 539, 739 S.W.2d 675 (1987); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Gavin v. Gavin*, 319 Ark. 270, 890 S.W.2d 592 (1995); *Valentine v. Valentine*, 2010 Ark. App. 259, 377 S.W.3d 387 (2010).

9-12-310. Waiting period before rendition of decree.

Unless the parties shall have lived separate and apart from each other for a period of twelve (12) months next before the filing of the complaint or unless the defendant is constructively summoned by publication of warning order, no decree of absolute divorce or of divorce from bed and board shall be rendered in any action brought on any grounds except bigamy before the thirtieth day following the day upon which the action for divorce is commenced. This prohibition is not subject to waiver by either or both parties to the action for divorce. However, the parties may agree that the case may be submitted in vacation.

History. Acts 1953, No. 348, § 1; A.S.A. 1947, § 34-1218.

CASE NOTES

Cited: Douglas v. Douglas, 227 Ark. 1057, 304 S.W.2d 947 (1957).

9-12-311. Legitimacy of children not affected.

The injured party may apply for a decree of divorce, but no divorce shall affect the legitimacy of the children born previously to entering the decree in the case.

History. Rev. Stat., ch. 51, § 2; C. & M. Dig., § 3501; Pope's Dig., § 4382; A.S.A. 1947, § 34-1203.

CASE NOTES

Cited: Narisi v. Narisi, 233 Ark. 525, 345 S.W.2d 620 (1961); Warren v. Warren, 273 Ark. 528, 623 S.W.2d 813 (1981); Tuck v. Ark. Dep't of Human Servs., 103 Ark. App. 263, 288 S.W.3d 665 (2008).

9-12-312. Alimony — Child support — Bond — Method of payment — Definition.

(a)(1) When a decree is entered, the court shall make an order concerning the care of the children, if there are any, and an order concerning alimony, if applicable, as are reasonable from the circumstances of the parties and the nature of the case.

(2) Unless otherwise ordered by the court or agreed to by the parties, the liability for alimony shall automatically cease upon the earlier of:

(A) The date of the remarriage of the person who was awarded the alimony;

(B) The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage;

(C) The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant by birth or adoption of the payor of the alimony, which circumstances shall be considered the equivalent of remarriage;

(D) The living full time with another person in an intimate, cohabitating relationship;

(E) The death of either party; or

(F) Any other contingencies as set forth in the order awarding alimony.

(3)(A) In determining a reasonable amount of child support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart.

(B)(i) The incarceration of a parent shall not be treated as voluntary unemployment for the purpose of establishing or modifying an award of child support.

(ii) As used in subdivision (a)(3)(B)(i) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days excluding credit for time served before sentencing.

(C) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(D) Only upon a written finding or specific finding on the record that the application of the child support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(4)(A)(i) The family support chart shall be reviewed and revised, if appropriate, at least one (1) time every four (4) years by a committee to be appointed by the Chief Justice of the Supreme Court to ensure that the support amounts are appropriate for child support awards.

(ii) The members of the committee shall include:

(a) One (1) or more members of the General Assembly;

(b) One (1) or more judges of the Court of Appeals;

(c) One (1) or more judges of a circuit court;

(d) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or his or her designee;

(e) An employee of an organization that provides legal services to low-income individuals; and

(f) One (1) or more attorneys who are licensed to practice law in the State of Arkansas.

(iii) The Supreme Court shall publish the following on a public website:

(a) The names of each member of the committee;

(b) The reports of the committee;

(c) The effective date of the family support chart; and

(d) The anticipated date on which the committee will next review the family support chart.

(iv) The committee shall:

(a) Establish the criteria for deviation from use of the chart amount; and

(b) Consider:

(1) Economic data on the cost of raising children;

(2) Labor market data;

(3) How the amounts listed in the family support chart impact a parent who has a family income below two hundred percent (200%) of the federal poverty level;

(4) Factors that influence employment rates and payment compliance rates among noncustodial parents; and

(5) Case data and payment compliance rates based on whether there was a deviation from the family support chart, default order, imputed income, or low income adjustment.

(B)(i) The committee shall revise the family support chart to be based on payor income and recipient income and no longer rely on the payor-income-based family support chart.

(ii) The committee shall revise the family support chart as required under subdivision (a)(4)(B)(i) of this section on or before March 1, 2020.

(5) The Supreme Court shall:

(A) Approve the family support chart and criteria after revision by the committee for use in this state; and

(B) Publish the family support chart and criteria through per curiam order of the court on a public website.

(6)(A) The court may provide for the payment of child support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls before graduation from high school so long as such child support is conditional on the child's remaining in school.

(B) The court also may provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent.

(7) Both a person paying alimony and a person receiving alimony are entitled to petition the court for a review, modification, or both of the court's alimony order at any time based upon a significant and material change of circumstances.

(b)(1) Alimony may be awarded under proper circumstances concerning rehabilitation to either party in fixed installments for a specified period of time so that the payments qualify as periodic payments within the meaning of the Internal Revenue Code.

(2) When a request for rehabilitative alimony is made to the court, the payor may request or the court may require the recipient to provide a plan of rehabilitation for the court to consider in determining:

(A) Whether or not the plan is feasible; and

(B) The amount and duration of the award.

(3) If the recipient fails to meet the requirements of the rehabilitative plan, the payor may petition the court for a review to determine if rehabilitative alimony shall continue or be modified.

(4) A person paying alimony is entitled to petition the court for a review, modification, or both of the court's alimony order at any time based upon a significant and material change of circumstances.

(c)(1) When the order provides for payment of money for the support and care of any children, the court, in its discretion, may require the person ordered to make the payments to furnish and file with the clerk of the court a bond or post security or give some other guarantee such as life insurance in an amount and with such sureties as the court shall direct.

(2) The bond, security, or guarantee is to be conditioned on compliance with that part of the order of the court concerning the support and care of the children.

(3) If action is taken due to a delinquency under the order, proper advance notice to the noncustodial parent shall be given.

(d)(1) All orders requiring payments of money for the support and care of any children shall direct the payments to be made through the registry of the court unless the court in its discretion determines that it would be in the best interest of the parties to direct otherwise.

(2) However, in all cases brought under Title IV-D of the Social Security Act or in which the income of the noncustodial parent is subject to withholding, the court shall order that all payments be made through the Arkansas Child Support Clearinghouse in accordance with § 9-14-801 et seq.

(e)(1)(A) Except as set forth in subdivision (e)(5) of this section, all orders directing payments through the registry of the court or through the Arkansas Child Support Clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year.

(B) The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely liquidated.

(2) The clerk, upon direction from the court and as an alternative to collecting the annual fee during the anniversary month each year after entry of the order, may prorate the first fee collected at the time of the first payment of support under the order to the number of months remaining in the calendar year and thereafter collect all fees as provided in this subsection during the month of January of each year.

(3)(A) Payments made for this fee shall be made annually in the form of a check or money order payable to the clerk of the court or other legal tender that the clerk may accept.

(B) This fee payment shall be separate and apart from the support payment, and under no circumstances shall the support payment be reduced to fulfill the payment of this fee.

(4) Upon the nonpayment of the annual fee by the noncustodial parent within ninety (90) days, the clerk may notify the payor under the order of income withholding for child support who shall withhold the fee in addition to any support and remit it to the clerk.

(5) In counties where an annual fee is collected and the court grants at least two thousand five hundred (2,500) divorces each year, the court may require that the initial annual fee be paid by the noncustodial parent or obligated spouse before the filing of the order.

(6)(A) All moneys collected by the clerk as a fee as provided in this subsection shall be used by the clerk's office to offset administrative costs as a result of this subchapter.

(B) At least twenty percent (20%) of the moneys collected annually shall be used to purchase, maintain, and operate an automated data system for use in administering the requirements of this subchapter.

(C) The acquisition and update of software for the automated data system shall be a permitted use of these funds.

(D) All fees collected under this subsection shall be paid into the county treasury to the credit of the fund to be known as the "support collection costs fund".

(E) Moneys deposited into this fund shall be appropriated and expended for the uses designated in this subdivision (e)(6) by the quorum court at the direction of the clerk of the court.

(f)(1) The clerk of the court shall maintain accurate records of all child support orders and payments made under this section and shall post to individual child support account ledgers maintained in the clerk's office all payments received directly by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and reported to the clerk by the Office of Child Support Enforcement.

(2) The Office of Child Support Enforcement shall provide the clerk with sufficient information to identify the custodial and noncustodial parents, a docket number, and the amount and date of payment.

(3) The clerk shall keep on file information provided by the Office of Child Support Enforcement for audit purposes.

(g) The clerk may accept the support payment in any form of cash or commercial paper, including personal check, and may require that the custodial parent or nonobligated spouse be named as payee thereon.

History. Rev. Stat., ch. 51, § 9; C. & M. Dig., § 3508; Pope's Dig., § 4390; Acts 1951, No. 56, § 1; 1979, No. 705, § 3; 1981, No. 657, § 1; 1985, No. 989, § 1; 1986 (2nd Ex. Sess.), No. 12, § 1; A.S.A. 1947, § 34-1211; Acts 1987, No. 599, § 1; 1989, No. 100, § 1; 1989, No. 948, § 2; 1989 (3rd Ex. Sess.), No. 54, § 2; 1991, No. 1008, § 2; 1991, No. 1098, § 2; 1991, No. 1102, § 2; 1993, No. 1242, §§ 5, 9; 1995, No. 1184, § 5; 1995, No. 1353, § 1; 1997, No. 208, § 7; 1997, No. 1273, § 1; 1997,

No. 1296, § 10; 1999, No. 1514, § 3; 2013, No. 1487, § 1; 2019, No. 904, §§ 1, 2; 2019 No. 907, § 1.

A.C.R.C. Notes. Acts 1995, No. 1353, § 2, provided: "The provisions of this act shall apply to payments of alimony due after the effective date hereof."

Acts 1997, No. 208, § 1, as reenacted by Acts 2017, No. 255, § 1, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals

with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code of 1987 Annotated."

Publisher's Notes. Acts 1989 (3rd Ex. Sess.), No. 54, § 2 is also codified as § 9-10-109.

As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

Amendments. The 2019 amendment by No. 904 inserted (a)(3)(B) and redesignated the remaining subdivisions accordingly; redesignated (a)(4)(A) as (a)(4)(A)(i); in (a)(4)(A)(i), inserted "reviewed and" and "if appropriate"; added (a)(4)(A)(ii) and (iii); added (a)(4)(B)(ii) [now (a)(4)(A)(iv)(b)]; added the (a)(5)(A) and (a)(5)(B) designations; in (a)(5)(B), substituted "Publish the family support chart and criteria" for "shall publish it" and added "on a public website"; inserted

"or in which the income of the noncustodial parent is subject to withholding" in (d)(2); and made stylistic changes.

The 2019 amendment by No. 907 redesignated (a)(4)(A) as (a)(4)(A)(i); substituted "one (1) time" for "once" in (a)(4)(A)(i); redesignated former (a)(4)(B) as (a)(4)(A)(ii) [now (a)(4)(A)(iv)(a)]; and added present (a)(4)(B).

U.S. Code. The Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1 et seq.

Title IV-D, referred to in this section, is a reference to Title IV-D of the Social Security Act, and is codified as 42 U.S.C. § 651 et seq.

Cross References. As to child support enforcement guidelines, see the Appendix at the end of this subtitle.

Change in payor income warranting modification, § 9-14-107.

Support and maintenance of children; implied consent to jurisdiction, § 9-14-101.

Uniform Interstate Family Support Act, § 9-17-101 et seq.

RESEARCH REFERENCES

ALR. Propriety of equalizing income of spouses through alimony awards. 102 A.L.R.5th 395.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

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Ark. L. Rev. Bond for Child Support, 5 Ark. L. Rev. 360.

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U. Ark. Little Rock L.J. Note: Duty of

Continued Child Support Past the Age of Majority, 1 U. Ark. Little Rock L.J. 397.

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Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

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Survey — Family Law, 11 U. Ark. Little Rock L.J. 215.

Survey — Family Law, 13 U. Ark. Little Rock L.J. 369.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 371.

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Note. — Some of the following cases were decided prior to the 1979 amendment to this section that made the statute gender-neutral.

Constitutionality.

Prior to the 1979 amendment, this section was undisputedly gender-based and therefore unconstitutional as violative of equal protection rights. This section, as amended by Acts 1979, No. 705 is gender-neutral rather than gender-based and therefore is constitutional. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Unconstitutionality of this section as it existed prior to 1979 amendment did not affect the validity of alimony awarded prior to declaration of unconstitutionality

since the wife's rights to alimony were vested by the decree of the court and not by the statute. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Supreme Court would not consider husband's challenge to constitutionality where the challenge was made two years after the original divorce decree because he waited too long to assert it, even though this section had since been declared unconstitutional because of its gender-based classification. *Schmidt v. Schmidt*, 268 Ark. 382, 596 S.W.2d 690 (1980).

This section, which permits a court to require child support past majority while the child remains a high school student, is not unconstitutional. *McFarland v. McFarland*, 318 Ark. 446, 885 S.W.2d 897 (1994).

Former wife failed to show that subdivision (a)(2)(D) of this section relating to alimony and cohabitation violated due process because her argument was based on a misinterpretation of the plain language of the statute; the party attacking a statute bears the burden of making a clear argument demonstrating unconstitutionality. According to the plain language of the statute, the court still has discretion to award alimony even if a party is involved in an intimate cohabitation and the parties are allowed to form an agreement concerning alimony under those circumstances as well. *Zimmerman v. Pope*, 2015 Ark. App. 499, 471 S.W.3d 646 (2015).

Former wife failed to show that subdivision (a)(2)(D) of this section relating to alimony and cohabitation amounted to an equal protection violation in disproportionately affecting women; the statute passes the rational-basis test, as the reasonable governmental purpose of the statute is to help settle the economic imbalance between the parties by assessing whether the facts of a case show a need for alimony. *Zimmerman v. Pope*, 2015 Ark. App. 499, 471 S.W.3d 646 (2015).

Former wife failed to show that subdivision (a)(2)(D) of this section relating to alimony and cohabitation violated the fundamental right to privacy under the strict-scrutiny test; there is a compelling state interest in determining the need for alimony, and delving into the private lives

of the parties is the least restrictive method, and indeed the only method, the court has to determine the circumstances of the parties and the need for alimony. *Zimmerman v. Pope*, 2015 Ark. App. 499, 471 S.W.3d 646 (2015).

In General.

This section was not repealed by § 9-12-315. *Williams v. Williams*, 150 Ark. 319, 234 S.W. 169 (1921).

Although wife did not plead her claim for alimony properly, where it was apparent on the record that throughout the proceeding the parties litigated the case with the full knowledge of wife's desire for alimony, the court erred in granting husband's motion to set aside the award of alimony. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

Construction.

The General Assembly intended the right of support for the wife, and children, to be construed in the same manner. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

Mandatory termination language added to this section by Acts 2013, No. 1487 does not apply retroactively to automatically terminate alimony awards entered before the 2013 amendment (answering certified question from the Court of Appeals). *Mason v. Mason*, 2017 Ark. 225, 522 S.W.3d 123 (2017).

Amendment to this section by Acts 2013, No. 1487 concerning automatic termination of alimony awards, including the provision that alimony automatically terminates on cohabitation, does not automatically terminate alimony awards entered before August 16, 2013; nothing in the statute or the legislative history indicates that the General Assembly intended for the amendment to apply to previous alimony awards (answering certified question from the Court of Appeals). *Mason v. Mason*, 2017 Ark. 225, 522 S.W.3d 123 (2017).

Applicability.

Acts 1979, No. 705, which made this section gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d

21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

When support has been previously set in a decree, a change of circumstances must be found before this section is applicable. *McKiever v. McKiever*, 305 Ark. 321, 808 S.W.2d 328 (1991).

Agreement of Parties.

An agreement by the mother to pay child support to her husband following a divorce was not invalid as being inequitable and contrary to public policy on the grounds that the agreement relieved the father of his obligation to support his children since the obligation belonged to both parents. *Barnhard v. Barnhard*, 252 Ark. 167, 477 S.W.2d 845 (1972).

Power of a court to modify a decree for the support of minor children cannot be defeated by an agreement between the parties, even if incorporated in the decree. *Williams v. Williams*, 253 Ark. 842, 489 S.W.2d 774 (1973).

Where the final decree of divorce found that the parties had agreed that one-third of the personal property and crops amounted to a certain sum and an order was entered awarding that amount to the wife, the husband had no grounds to complain that the division of personal property was not exactly one-third. *Wilson v. Wilson*, 270 Ark. 485, 606 S.W.2d 56 (1980).

The trial court was not bound by the property settlement agreement as to alimony because the court has the authority to make an initial award of alimony when a divorce decree is entered. *Womack v. Womack*, 16 Ark. App. 108, 697 S.W.2d 930 (1985).

Prior to 1987, agreements between former spouses reducing the amount of child support payments did not bind the court, but the court could recognize such an agreement (1) if the agreement was supported by a valid consideration, or (2) if it were inequitable to do otherwise; thus, where the mother gave up the right to 32% of the father's income as previously ordered but gained an increase in the fixed amount of support from \$200 to \$250 per month over a period of time there was valid consideration and the chancellor did not err in recognizing the agreement as to the amount of arrearages due before the 1987 amendment to § 9-12-314. *Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32

(1990), superseded by statute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

Alimony.

The award of alimony in a divorce action is not mandatory, but is a question which addresses itself to the sound discretion of the chancellor, and the chancellor's decision will not be disturbed absent a clear abuse of that discretion. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988); *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988); *Busby v. Busby*, 39 Ark. App. 108, 840 S.W.2d 195 (1992).

The chancellor erred when he ordered that alimony would terminate only upon the death of either party and that alimony would not terminate upon the remarriage of the recipient wife where his stated purpose for such award was to substitute alimony for an interest in the husband's unvested military retirement. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000).

When the original divorce decree was entered, the circuit court judge failed to address the issue of alimony; two years later upon the wife's motion for reconsideration, the circuit judge had subject-matter jurisdiction under this section to enter a supplemental divorce decree awarding alimony. *Edwards v. Edwards*, 2009 Ark. 580, 357 S.W.3d 445 (2009).

Nothing in subdivision (a)(1) of this section or applicable case law requires a spouse to attempt to obtain public housing before a trial court may award alimony. *Stuart v. Stuart*, 2012 Ark. App. 458, 422 S.W.3d 147 (2012).

In a divorce decree, the trial court did not abuse its discretion in awarding \$642 per month to the wife in permanent alimony under subdivision (a)(1) of this section. The trial court considered the appropriate factors and observed that while the husband's income was \$2,440 per month, the wife's income was \$440 per month; the court also noted that the wife did not work outside the home during the nineteen-year marriage. *Stuart v. Stuart*, 2012 Ark. App. 458, 422 S.W.3d 147 (2012).

Trial court was permitted to modify a divorce decree beyond the expiration of ninety days because Ark. R. Civ. P. 60 was not applicable as the second order merely

corrected an oversight in the divorce decree and clarified: (1) the date alimony previously awarded under subdivision (a)(1) of this section would begin; (2) that the Social Security Administration would withhold the payments from the husband's Social Security disability payments; and (3) that alimony payments would continue until remarriage or an appellate ruling. *Stuart v. Stuart*, 2012 Ark. App. 458, 422 S.W.3d 147 (2012).

Circuit court did not abuse its discretion by entering a monthly award of alimony for a period of 30 years in a decree of divorce because the court made findings regarding the amount of alimony and had the authority to set the duration of the award of alimony. Moreover, there was no evidence to support the idea that the alimony award was meant to be punitive, based on the husband's addictions and other detrimental behavior having placed the parties in financial hardship. *Trucks v. Trucks*, 2015 Ark. App. 189, 4599 S.W.3d 312 (2015).

Denial of a former spouse's petition to eliminate alimony payments was appropriate because the circuit court did not abuse its discretion (1) by considering that the parties had planned that the obligee was to stay at home with the children and (2) in finding that the obligee spouse had a need for alimony until the oldest child graduated from high school, at which time the alimony was to begin to be phased out. *Hix v. Hix*, 2015 Ark. App. 199, 458 S.W.3d 743 (2015).

Trial court specifically increased monthly alimony over the years commensurate with the amount of decreasing child support, and as such, child support and alimony were inextricably intertwined; because the case was reversed and remanded for recalculation of the father's child-support obligation, the issue of alimony was also remanded. *Fox v. Fox*, 2015 Ark. App. 367, 465 S.W.3d 18, 465 S.W.3d 18 (2015).

Awarding the husband permanent alimony of \$3,787 was an abuse of discretion where the parties had equal earning capacities as lawyers and shared joint custody with equal physical custody, and the law did not require the wife to pay permanent alimony to support the husband's choice to earn less so he had more flexibility. *Grimsley v. Drewyor*, 2019 Ark. App. 218, 575 S.W.3d 636 (2019).

Rehabilitative alimony award for seven years was affirmed where the court had considered the disparity in the parties' incomes, the fact that the wife had worked in the husband's business the entire length of the marriage, and the parties' health. *Perser v. Perser*, 2019 Ark. App. 467, 588 S.W.3d 395 (2019).

Permanent alimony award to the wife was affirmed where the circuit court heard evidence of the wife's need, the husband's ability to pay, the spendable incomes of the parties, and the wife's standard of living to which she had become accustomed during the marriage, as well as other evidence. *Carr v. Carr*, 2019 Ark. App. 513, 588 S.W.3d 821 (2019).

Trial court did not abuse its discretion in awarding the ex-wife permanent alimony because the ex-husband's claim that the wife was capable of earning considerably more income than she did at present was not supported by the proof as, after the parents' special-needs child was born, the wife became a stay-at-home mom to care for him; at the time of the parties' divorce, the wife was an hourly employee making \$12.75 an hour, while the husband earned a \$45,000 salary; and there was evidence that the husband's earning potential was higher than his current salary given that he had worked at a significantly higher salary at previous teaching jobs and had a master's degree that qualified him to be a school principal. *Medlen v. Medlen*, 2020 Ark. App. 159 (2020).

Alimony award of \$2,750 per month was reasonable given that the wife was 44 years old, had a very limited work history, was physically capable of working but had no training and no high school education or GED, and the fact that the husband had monthly income of \$9,300 while the wife's was only \$400. *Cherry v. Cherry*, 2020 Ark. App. 294, 603 S.W.3d 585 (2020), review granted, 2020 Ark. LEXIS 315 (Sept. 24, 2020).

Trial court did not err by awarding alimony to the wife after considering the 23-year marriage, that the husband generated nearly all marital income, the wife had been a stay-at-home mother and assisted the husband with the business without pay, the wife was earning minimal income caring for her disabled father, and the wife had a high school education, health issues, and minimal work experi-

ence. *Middleton v. Middleton*, 2020 Ark. App. 389 (2020).

—In General.

The amount of support must always depend upon the particular facts in each case, such as husband's earnings and ability to pay as well as the needs of the wife. *Dean v. Dean*, 222 Ark. 219, 258 S.W.2d 54 (1953).

Where property awards were sufficient wife was not entitled to alimony. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957).

Fact that wife has more income than husband does not, within itself, preclude her right of recovery, though the fact that a wife has more income than the husband may be taken into consideration in making an award. *White v. White*, 228 Ark. 732, 310 S.W.2d 216 (1958).

Chancery courts have the power to grant the wife, as a part of her alimony, an interest in her husband's real property where he secures the divorce. *Cook v. Cook*, 233 Ark. 961, 349 S.W.2d 809 (1961).

When awarding alimony, the chancellor should give proper consideration to (1) the financial condition of the parties such as the husband's ability to pay, the wife's financial needs, and the wife's ability to support herself; (2) the station in life of the parties, that is, the manner and style of living to which the wife has become accustomed; and (3) the character of the parties bearing on the cause of the separation. *Sutton v. Sutton*, 266 Ark. 451, 587 S.W.2d 67 (1979).

A decree for alimony is binding and conclusive on the parties as to the amount of alimony and as to all conditions or facts existing when it was rendered. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Section 9-12-301 allows independent proceeding for the division of marital property or alimony when neither the division nor alimony could have been considered in the divorce action. *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985).

If either spouse is entitled to alimony, the chancellor must comply with this section by making that decision when the decree is entered. If circumstances prevent the spouse who is to pay the alimony from being able to do so, then the court

may recite that fact and decline to award a specific amount; thereafter, if circumstances change in a way that will permit the payment of alimony, the party who has been determined to be entitled to it may petition the court. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

Where chancellor's order said alimony award was not a distribution of marital property or given in lieu of such a distribution, but it then referred to the discrepancy in income which would result from the difference in profit potential between two properties, reversal of the award gave the chancellor appropriate flexibility in reconsidering the distribution of marital property, if he chose to do so, rather than readopt the unequal distribution with an explanation as § 9-12-315 requires. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988).

The ability of a party to pay and the need of the other party are primary factors to be considered in awarding alimony. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Where spouse ordered to pay alimony has the ability to generate substantial earnings and a past history of doing so, but, at the time of the divorce, is engaged in lesser employment, the trial court need not award a token amount of alimony in the decree in order to reserve to the other spouse the right to petition for a reasonable amount of alimony when the circumstances permit. *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996).

Chancellor abused his discretion in failing to award husband alimony, where marriage was of long duration, husband was unemployed, without independent financial means, in declining health and ordered to sell farm he had been operating, and wife had a secure job, was beneficiary of a trust fund, retained the main instrumentality enabling her to earn her livelihood and in better health than husband. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

The statute is not determinative with regard to the termination of alimony provided for in an incorporated agreement. *Rockefeller v. Rockefeller*, 335 Ark. 145, 980 S.W.2d 255 (1998).

The basic decision on alimony must be made at the time of the divorce decree; a general reservation is insufficient for this purpose and case law only allows alimony

to be reserved when the payor's circumstances do not permit an award at the time the decree is entered. *Norwood v. Norwood*, 2020 Ark. App. 345, 604 S.W.3d 252 (2020).

Circuit court did not err in failing to award the wife alimony where the basic decision of whether either spouse was entitled to alimony was not made when the divorce decree was entered nearly five years earlier, and thus, under subsection (a) of this section, the circuit court could not have awarded alimony in its final order. *Norwood v. Norwood*, 2020 Ark. App. 345, 604 S.W.3d 252 (2020).

—Cohabitation.

There was no abuse of discretion in denying alimony as the circuit court would not have awarded alimony to the wife under either the previous or current version of subdivision (a)(2)(D) of this section; moreover, the testimony and exhibits went beyond the issue of cohabitation and concerned income, earning capacity, age, health, and expenses. *Zimmerman v. Pope*, 2015 Ark. App. 499, 471 S.W.3d 646 (2015).

Trial court erred by terminating the wife's alimony award as subdivision (a)(2)(D) did not automatically terminate alimony awards that were entered before the provision was enacted (applying *Mason v. Mason*, 2017 Ark. 225, 522 S.W.3d 123). *Mason v. Mason*, 2017 Ark. App. 683, 536 S.W.3d 657 (2017).

—Discretion of Court.

An award of alimony lies within the discretion of the chancellor and will not be reversed absent an abuse of that discretion. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Where party seeks award of alimony and greater share of marital property, alimony and property settlements are complimentary devices that a chancery court must employ to make the dissolution of a marriage of long standing as equitable as possible. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

Trial court did not abuse its discretion in its initial alimony award of \$3,500 a month for 36 months and thereafter \$1,500 a month for 60 months or upon the wife's remarriage because the wife had recently acquired a job making \$39,000 a year; the husband had a net monthly

income of \$15,000 to \$16,000 at the time of the final hearing, but he was also making the parties' \$5,884 mortgage payment; and the court considered the wife's need for alimony, the husband's ability to pay, the length of the marriage, the incomes and expenses of both parties, the financial circumstances of the parties, the amount and nature of the income, both current and anticipated, of both parties, and the extent and nature of the resources and assets of both parties. *Mason v. Mason*, 2017 Ark. App. 683, 536 S.W.3d 657 (2017).

—Duration.

The chancery court was not wrong in not extending alimony until 56-year-old wife was eligible for Social Security, rather than just for five years; where the wife had marketable skills, and therefore had the means to support herself, that fact joined with the alimony award and other property given her in the divorce was evidence that the chancery court weighed the relevant circumstances, and acted well within its discretion in awarding alimony "for a specified period of time." *Ducharme v. Ducharme*, 316 Ark. 482, 872 S.W.2d 392 (1994).

The chancellor erred when he ordered that alimony would terminate only upon the death of either party and that alimony would not terminate upon the remarriage of the recipient wife where his stated purpose for such award was to substitute alimony for an interest in the husband's unvested military retirement. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000).

—Modification.

When a decree is entered fixing and allowing alimony for the support and maintenance of the wife, that decree limits and defines the extent of the husband's obligation in that respect, but the allowance is always subject to modification by the court to meet the changed situation and conditions of the parties in interest. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

Trial court contemplated the wife inheriting from her mother at the time the original alimony award was given, and thus her ultimately doing so was not a material change in circumstances for alimony modification purposes; the trial

court was free not to believe the husband's assertion that the wife's net worth was greater than \$1.3 million, and the trial court did not abuse its discretion in rejecting the husband's request to terminate or reduce his alimony obligation. *Berry v. Berry*, 2017 Ark. App. 145, 515 S.W.3d 164 (2017).

Trial court erred in refusing to modify the wife's alimony because the evidence showed that the husband's income increased dramatically following the entry of the divorce decree; that his obligations to the wife decreased as his obligation to make the house payment terminated; and that neither party received the anticipated payoff from the sale of the house — a factor the trial court clearly considered important to the initial alimony determination. *Mason v. Mason*, 2017 Ark. App. 683, 536 S.W.3d 657 (2017).

—Specific Provisions.

Circuit court's finding that the issue of alimony could be revisited in four years did not constitute an escalator clause because the court did not order that alimony would automatically increase when child-support payments ceased. The court explicitly stated that in four years, when child support abated, the wife could petition the court to review the issue of alimony based on the facts at that time. *Nauman v. Nauman*, 2018 Ark. App. 114, 542 S.W.3d 212 (2018).

Appeal.

Husband in appeal from divorce action has no standing to raise any question about the constitutionality of allowing alimony and attorney's fees where no allowance was made. *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977).

Appellant had standing to challenge the constitutionality of this section where he was financially obligated to his wife under decree rendered pursuant to this statute. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Indebtedness which spouse was required to pay as maintenance and support not dischargeable in bankruptcy. *Barker v. Barker*, 271 Ark. 956, 611 S.W.2d 787 (1981).

Bond.

There is no language in this section which authorizes the seizure of one's prop-

erty without limitation under the guise of a bond; accordingly, one spouse in a divorce action was not entitled to have all of the other spouse's property impounded as a bond under this section, particularly where the second spouse had never been ordered nor attempted to make a bond. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

Child Support.

Circuit court did not clearly err in finding that the husband's income for child-support purposes was that reflected on his tax returns; it was clear that the husband's ownership in the limited partnership was a significant portion of his net worth; thus, that ownership interest would be a proper consideration. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Court abused its discretion in failing to order parents to pay child support to a grandmother who was awarded custody of their child at the time their divorce was granted, as required by subdivision (a)(1) of this section, where the court had ample evidence of the mother's income and evidence that the father was on active duty in the U.S. Army National Guard. *Bass v. Weaver*, 101 Ark. App. 367, 278 S.W.3d 127 (2008).

Where the father was awarded child custody and the mother was ordered to pay child support based on the child-support chart rate set forth in Ark. Sup. Ct. Admin. Order No. 10, she was not entitled to a reduction in child support based on allegations that she could not make ends meet while the father was placing some of the child support funds into his savings account. The mother did not show a change of circumstances, nor did she rebut the presumption that the amount of child support awarded under the family-support chart was reasonable in accordance with this section. *Hubanks v. Baughman*, 2009 Ark. App. 585 (2009).

Trial court did not err in denying a mother's motion to increase a father's child-support obligation because all of the children's needs were being met from the father's support payments, with over \$3,000 left over each month, and the mother's approximate \$46,000 annual income from her part-time jobs did not even factor into the children's expenses; the

father was not the only parent required to support the children because in accordance with Administrative Order of the Supreme Court No. 10, the mother's income was also a relevant factor to consider in awarding child support. *Kemp v. Kemp*, 2011 Ark. App. 354, 384 S.W.3d 56 (2011).

It was error for the court to calculate the husband's income based on his tax returns after determining that the tax returns were not credible, because the court found that the husband was earning more than his reported \$40,000 salary and questioned him regarding his underemployment. *John v. Bolinder*, 2013 Ark. App. 224 (2013).

In a child support modification case, a trial court did not err by relying on a father's tax record in determining his monthly income when it determined that there was a material change of circumstances to support the modification under § 9-14-107(a)(1); there was no need to consider the net-worth approach. *Cowell v. Long*, 2013 Ark. App. 311 (2013).

Because the father was unemployed, there existed a rebuttable presumption that the child support should be based on his zero income as applied to the support chart; the trial court could have rebutted that presumption by making written findings that the application of the support chart would be unjust or inappropriate, but the trial court did not make such findings and consequently erred in its calculation of child support. The trial court has the discretion to impute income, however, and the child support award was reversed and remanded for reassessment. *Fox v. Fox*, 2015 Ark. App. 367, 465 S.W.3d 18, 465 S.W.3d 18 (2015).

Requiring the wife to make a one-time payment of \$1.25 million in child support to the husband per a provision in the divorce decree was error where the assets of the wife's inheritance did not constitute income under Ark. Sup. Ct. Admin. Order No. 10, § II, and there was no evidence of the children's needs. None of the assets that were part of the \$5 million inheritance had been liquidated and the parties had joint custody. *Grimsley v. Drewyor*, 2019 Ark. App. 218, 575 S.W.3d 636 (2019).

Award of child support was affirmed where the court disbelieved the husband as to why he was earning half of what he had earned for the three or more years

before he filed for divorce, the husband owned his medical practice and was in sole control of his salary, and the court did not believe that the husband's tax returns showed the correct amount of his earnings. *Perser v. Perser*, 2019 Ark. App. 467, 588 S.W.3d 395 (2019).

Circuit court erred in allocating the tax exemptions for the parties' children; the circuit court was not bound by the parties' earlier contractual agreement that was made part of the judicial-separation case, and giving tax allocations to a noncustodial parent is considered a deviation from the child-support chart amount, which requires findings, and the necessary findings were lacking. *Callan v. Callan*, 2020 Ark. App. 205, 599 S.W.3d 145 (2020).

—In General.

Where chancery court did not pass on the question of support of the children, but merely denied the wife alimony, children are not barred from bringing suit against their father, and whether they would recover or not would depend upon all the facts and circumstances. *Upchurch v. Upchurch*, 196 Ark. 324, 117 S.W.2d 339 (1938).

It is duty of father to support minor child even though custody is awarded to mother, and misconduct of mother cannot be allowed to prejudice the child's right to support. *Reiter v. Reiter*, 225 Ark. 157, 278 S.W.2d 644 (1955).

Order for the payment of allowances for child support is not a final decree upon which an execution may be issued, or which might become a lien on real estate. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

Action to recover delinquent child support payments was not timely where instituted more than five years after the last payment became due. *Brun v. Rembert*, 227 Ark. 241, 297 S.W.2d 940 (1957).

A mother's obligations to her child for support do not come into existence only when the father is impoverished. *Barnhard v. Barnhard*, 252 Ark. 167, 477 S.W.2d 845 (1972).

The power of a chancery court to order child support payments under this section does not create in the court an implied authority to impose a lien on the other spouse's property for future child support, and equity courts have no inherent authority to grant one. *Warren v. Warren*,

273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

To declare that *Perkins v. Perkins*, 15 Ark. App. 82, 690 S.W.2d 356 (1985), or this section effectively eliminates the necessity of the need for equity or a chancellor in child support cases is utterly without foundation. *Borden v. Borden*, 20 Ark. App. 52, 724 S.W.2d 181 (1987).

While there is no specific provision identifying "earning capacity" as an element to be considered when ordering child support, it is nevertheless recognized as a factor. In determining the amount to be contributed for child support, the chancellor should consider the needs of the children, the resources of each parent, their respective ages, earning capacities, incomes and indebtedness, state of health, future prospects, and any other factors that will aid the court in reaching a just and equitable result. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

Where custodial parent did not interfere with former spouse's visitation rights, nor defy the divorce decree, but did delay in pursuing her rights to obtain judgment for the accrued child support payments, delay did not defeat right to accrued child support. *Cunningham v. Cunningham*, 297 Ark. 377, 761 S.W.2d 941 (1988).

The list of factors set out by the Supreme Court for determining whether an amount specified by the chart is unjust or inappropriate, is not exclusive. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

The language "other income or assets available to support the child from whatever source" is intended to expand, not restrict, the sources of funds to be considered in setting child support. *Belue v. Belue*, 38 Ark. App. 81, 828 S.W.2d 855 (1992).

The chancellor correctly based the amount of child support ordered on a monthly income which included noncustodial Veterans' Administration disability benefits. *Belue v. Belue*, 38 Ark. App. 81, 828 S.W.2d 855 (1992).

In a divorce action, a trial court did not err when it relied on a former husband's total net income and averaged the husband's salary to determine income for child support payments, which were presumptively proper under the guidelines and family support chart of this section and Ark. Sup. Ct. Admin. Order No. 10.

Taylor v. Taylor, 369 Ark. 31, 250 S.W.3d 232 (2007).

Trial court's order from which the father appealed failed to comply with Administrative Order No. 10 and this section in that it did not contain the court's determination of the father's 2015 income, it did not recite the amount of support required under the guidelines, and it did not recite whether the court deviated from the Family Support Chart and why it deviated. Newton v. Newton, 2018 Ark. App. 525, 565 S.W.3d 493 (2018).

—Beyond Eighteenth Birthday.

Even after a handicapped child reaches age 18, a parent should provide further support for educational purposes to prepare the child to pay his medical bills, and support himself if the financial condition of the parent allows. Elkins v. Elkins, 262 Ark. 63, 553 S.W.2d 34 (1977).

This section gave the chancellor the authority to direct noncustodial parent to continue making payments on the custodial parent's house until the parties' child graduated from high school. Keesee v. Keesee, 48 Ark. App. 113, 891 S.W.2d 70 (1995).

—Chart.

Courts are required to refer to chart but are not bound to set support payments in accordance with exact terms thereof; degree of dependence upon chart is left to sound discretion of the chancellor. Thurston v. Pinkstaff, 292 Ark. 385, 730 S.W.2d 239 (1987).

The Family Support Chart is to be used as a guide and is not intended to be binding. Borden v. Borden, 20 Ark. App. 52, 724 S.W.2d 181 (1987).

Award of support based upon Family Support Chart was not abuse of discretion. Borden v. Borden, 20 Ark. App. 52, 724 S.W.2d 181 (1987); Barnes v. Barnes, 311 Ark. 287, 843 S.W.2d 835 (1992).

Although the chancellor was not required to use the family support chart in setting child support the fact that his order of support was in conformity with the chart indicated that it was not erroneous. Freeman v. Freeman, 29 Ark. App. 137, 778 S.W.2d 222 (1989) (preceding decisions prior to 1989 amendment by No. 948).

Where chancellor made specific findings on the record spelling out why the support

chart was inappropriate, considering all relevant factors, it was sufficient to rebut the presumption that the amount of child support calculated pursuant to the family support chart was correct. Scroggins v. Scroggins, 302 Ark. 362, 790 S.W.2d 157 (1990).

Reference to the Family Support Chart is mandatory, and the chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by written findings stating why the chart amount is unjust or inappropriate. Black v. Black, 306 Ark. 209, 812 S.W.2d 480 (1991).

Where the chancellor's order failed to indicate whether he indeed referred to the chart in making his decision, he projected a support chart amount premised on the defendant's monthly income, and he presumed that amount to be correct, the case was remanded for the chart to be considered. Black v. Black, 306 Ark. 209, 812 S.W.2d 480 (1991).

While there is a rebuttable presumption that the amount of support according to the chart is correct, the chancellor in his discretion is not entirely precluded from adjusting the amount as deemed warranted under the facts of a particular case. However, when deviating from the chart, the chancellor must explain his or her reasoning by the entry of a written finding or by making a specific finding on the record. Waldon v. Waldon, 34 Ark. App. 118, 806 S.W.2d 387 (1991).

Where the end result reached by the chancellor represented only a slight deviation from the chart amount, the findings made by the chancellor on the record were sufficient to rebut the presumption that the amount of support according to the chart was correct. Waldon v. Waldon, 34 Ark. App. 118, 806 S.W.2d 387 (1991).

The child support chart and the criteria used for deviating from it are not mandatory, but there is a rebuttable presumption that the amount specified in the chart is the appropriate amount; applying the specific chart amounts is not mandatory if it would be unjust or inequitable, and if written findings are made to that effect. Stewart v. Winfrey, 308 Ark. 277, 824 S.W.2d 373 (1992).

The child support chart specifically takes into account payments made under court order to support other children, and allows these payments to be deducted

from weekly take home pay. The chart does not refer to support of children not under court order, but a payor spouse's ability to pay can be considered, and necessarily includes other children the parent is legally obligated to support. *Stewart v. Winfrey*, 308 Ark. 277, 824 S.W.2d 373 (1992).

Given the presumption that the chart amount is reasonable, it is incumbent on the trial courts to give a fuller explanation of their reasons for rejecting the chart; it was not sufficient to state merely that the amount was "unreasonable." *Cochran v. Cochran*, 309 Ark. 604, 832 S.W.2d 252 (1992).

Where there was no evidence regarding defendant's weekly take home pay during the relevant time period, the support was set at the minimum level required of an unemployed person. *Barnes v. Barnes*, 311 Ark. 287, 843 S.W.2d 835 (1992).

Where the chancellor found that the chart called for \$51.00 per week child support, which would quadruple the non-custodial parent's payments, and considering his expenses, would be devastating to increase by four times the amount of his support payments, an increase of the weekly payment to \$30.00 instead of \$51.00 followed the requirements, and applied the rules set out in the Supreme Court's per curiams by avoiding a modification that would work undue hardship on that party. *Howard v. Wisemon*, 38 Ark. App. 27, 826 S.W.2d 314 (1992).

Reference to the child support chart is mandatory. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The child support chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by written findings stating why the chart amount is unjust or inappropriate. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The presumption that the child support chart correctly estimates support may be overcome if the chancellor determines, upon consideration of all the relevant factors, that the chart amount is unjust or inappropriate; the relevant factors include food, shelter, utilities, clothing, medical and education expenses, accustomed standard of living, insurance, and transportation expenses. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

The family support chart is structured so that the amount of support per child decreases in proportion to the number of added dependents. *Ark. Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Chancellor erroneously applied father's income figure of \$270.00 to the chart under the column for three dependents, which showed support of \$101.00, and then divided that figure by three, to arrive at support of \$35.00 for the one child before the court; the chart should be applied to the child that is before the court, and it was improper for the chancellor to have applied the chart based on three dependents and then divide that amount by three. *Ark. Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Reference to the family support chart is mandatory, and the chart itself establishes a rebuttable presumption of the appropriate amount which can only be explained away by express findings stating why the chart amount is unjust or inappropriate. *McJunkins v. Lemons*, 52 Ark. App. 1, 913 S.W.2d 306 (1996).

Where the chancellor failed to make any reference to the family chart in his comments or the order, the chancellor failed to comply with this section and the award was improper. *McJunkins v. Lemons*, 52 Ark. App. 1, 913 S.W.2d 306 (1996).

Reference to the family support chart is mandatory; although a trial court's order did not specifically reference the family support chart, the appellate court held that the trial judge in his bench ruling referenced the chart by ordering the incarcerated father to pay the minimum amount. *Allen v. Allen*, 82 Ark. App. 42, 110 S.W.3d 772 (2003).

Given the evidence of the father's affluence, exceptional generosity to his girlfriend and sisters, and extravagant lifestyle, the trial judge did not abuse his discretion in setting child support in the divorce proceeding in accordance with the presumptive amount derived from the family support chart. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Father was properly ordered to pay a percentage of his salary as child support, pursuant to the child support guidelines, where his income exceeded the amount of

income shown on the family support chart as the child was entitled to a lifestyle similar to that of his father's and said monies were going toward the child's college education; thus, the trial court did not abuse its discretion in not deviating from the family-support guidelines and in not ordering father to pay less than 15 percent of his monthly income in child support. *Ceola v. Burnham*, 84 Ark. App. 269, 139 S.W.3d 150 (2003).

—Custody.

If the divorce decree grants the custody of a minor child to the mother but makes no provision for the child's support and the mother thereafter supports the child and supplies the child with necessities, the father, if financially able, should repay the mother for the reasonable value of the support or necessities thus furnished. *Wilder v. Garner*, 235 Ark. 400, 360 S.W.2d 192 (1962).

Where parents have physical custody of one child each, the court should determine whether each parent should pay child support for the other child and, if not, should make specific findings as provided by this section. *Lonigro v. Lonigro*, 55 Ark. App. 253, 935 S.W.2d 284 (1996).

—Deviation from Chart.

Given the presumption in this section that the chart amount is reasonable, it is incumbent on the chancellor to give a full explanation of his reasons for rejecting the chart. *Roland v. Roland*, 43 Ark. App. 60, 859 S.W.2d 654 (1993).

The chancellor did not abuse his discretion in considering father's other two illegitimate children as justification for deviating from the child support chart, even though father was not under a court order to support those children. *Ark. Dep't of Human Servs. Child Support Enforcement Unit v. Forte*, 46 Ark. App. 115, 877 S.W.2d 949 (1994).

Where chancellor awarded the noncustodial parent the right to claim the children as dependents for income tax purposes, the chancellor essentially deviated from the child support chart without providing the required written findings. *Fontenot v. Fontenot*, 49 Ark. App. 106, 898 S.W.2d 55 (1995).

Chancellor's deviation from family child support chart without making appropriate findings of fact did not relieve parent

of his support obligation, but child-support issue would be remanded to chancery court to reconsider support obligation consistent with this section. *Mearns v. Mearns*, 58 Ark. App. 42, 946 S.W.2d 188 (1997).

By omitting that portion of a depreciation deduction which represented spendable income to noncustodial parent without entering a specific finding on the record that it would be unjust or inappropriate to calculate the support based on its inclusion, the chancellor in effect deviated from the child-support chart without making the requisite written findings. *Stepp v. Gray*, 58 Ark. App. 229, 947 S.W.2d 798 (1997).

The chancellor did not commit error in declining to deviate from the presumptively correct support amount where the father asserted that the amount required by the statute exceeded what was a reasonable requirement for child support for a very young child and sought to prove his contention through cross-examination of the wife as to her utility bills, cost of food, and the costs associated with living in her trailer home, as well as those expenses on her affidavit of financial means, which had been prepared before the child was born. *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000).

Trial court properly dismissed client's malpractice action even though the attorney committed malpractice by failing to perfect client's appeal of the trial court's child-support award as the client would not have prevailed on appeal because the trial court properly adhered to guidelines of Arkansas Family Support Chart when it deviated from presumptive amount; although the trial court was required to consider the guidelines, the court did not have to use the chart amount where the circumstances of the parties indicated another amount would be more appropriate. *Davis v. Bland*, 367 Ark. 210, 238 S.W.3d 924 (2006).

Trial court did not abuse its discretion in deviating from the child support chart provided by Administrative Order of the Supreme Court No. 10 and by disallowing a mother's request for a \$3,000 allowance per month so that she could work part-time or not at all because considering the child support chart, evidence, testimony, and exhibits, the trial court determined that the increase to \$10,317 per month

was reasonable and allowed both homes to provide for the children in like manner; the trial court found that the presumptive amount of monthly support provided by the family support chart was rebutted based on credible evidence, the testimony, the exhibits, and the needs of the children. *Gilbow v. Travis*, 2010 Ark. 9, 372 S.W.3d 319 (2010).

There was no abuse of discretion in the circuit court's decision to deviate upward from the family support chart; although the father testified that he lived on a sailboat, he acknowledged that he also had another, land-based home, and the court was permitted to consider the father's investment assets themselves in deviating from the support chart. *Guthrie v. Guthrie*, 2015 Ark. App. 108, 455 S.W.3d 839 (2015).

—Modification.

Any increase in the allowance for the support of children must be based upon a showing that conditions have changed since the entry of the decree of divorce. *Haney v. Haney*, 235 Ark. 60, 357 S.W.2d 19 (1962).

Where child support payments pursuant to written order were at variance with those previously announced orally by the chancellor, the chancellor was at liberty to reconsider his first conclusion. *Schaefer v. Schaefer*, 235 Ark. 870, 362 S.W.2d 444 (1962).

Remarriage of the husband was not in itself sufficient change in circumstances to justify a reduction of child support payments. *Pults v. Pults*, 236 Ark. 434, 367 S.W.2d 120 (1963).

Change in custody constitutes a change in circumstances under which a court has the right to review and modify awards for support of children, increasing or reducing the awards as warranted. *Williams v. Williams*, 253 Ark. 842, 489 S.W.2d 774 (1973).

Trial court always has right to review and modify child support payments in accordance with changing circumstances and may increase or reduce the payments as warranted in each case, but it is error to change amount of support where there is no evidence submitted to show a change in circumstances. Matters which should be considered in determining whether there has been a change in circumstances warranting adjustment in child support

include remarriage of the parties, a minor reaching majority, change in the income and financial conditions of the parties, relocation, change of custody, debts of the parties, financial conditions of the parties and families, ability to meet current and future obligations, and child support chart. *Thurston v. Pinkstaff*, 292 Ark. 385, 730 S.W.2d 239 (1987).

It is error to change the amount of child support where there is no evidence submitted to show a change in circumstances. *Ross v. Ross*, 29 Ark. App. 64, 776 S.W.2d 834 (1989).

Chancellor's determination as to whether there are sufficient changed circumstances to warrant an increase in child support is a finding of fact; this finding will not be reversed unless it is clearly erroneous. *Hunt v. Hunt*, 40 Ark. App. 166, 842 S.W.2d 470 (1992).

Because this section and § 9-14-234 specifically provide that any decree which contains a provision for the payment of child support shall be a final judgment until either party moves to modify the order, where father did not file his petition to reduce support until over a year after the decree was entered, the unpaid support accrued as originally ordered, until the motion to modify the judgment was filed. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Whether provisions regarding child support are in a divorce decree or property settlement contract, the court always retains authority and jurisdiction to modify child support obligations. *Warren v. Kordsmeier*, 56 Ark. App. 52, 938 S.W.2d 237 (1997).

A child-support obligation cannot be modified based solely on the current chart amount without there also being proof of a change in circumstances, and where the appellant failed to introduce evidence of appellee's income when the order was entered, a change in circumstances could not be shown. *Ritchey v. Frazier*, 57 Ark. App. 92, 940 S.W.2d 892 (1997).

Material change of circumstances occurred when the child's custody changed from the mother to the father and the child began attending a military academy; thus, the trial court was not bound by the one-half division of education expenses it directed in its first order, which contemplated the child attending a different

school. *Hyden v. Hyden*, 85 Ark. App. 132, 148 S.W.3d 748 (2004).

Two large judgments received by father constituted "income" under Ark. Sup. Ct. Admin. Order No. 10 and, thus, the trial court did not err by ordering the father to pay a percentage of the judgments as a one-time child support obligation; it was irrelevant to the modification proceeding that the father had agreed to repay discharged bankruptcy debts, and the father's monthly obligation was not increased due to the judgments. *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005).

Father was allowed to claim the youngest child as a dependent and receive a tax exemption where the circuit court determined that the mother had not been employed since the birth of the last child and that the support of \$4,653.00 per month for the child in the mother's custody was more than 50% of the support required to maintain the child in her lifestyle. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

In reducing father's child support obligation from \$1000 to \$525 per month, the trial judge specifically noted that the child's accustomed life style was being accommodated and that the father was in fact earning no income whatsoever; the chart amount was not deemed to be unjust or inappropriate based upon the criteria applied to the facts, and the trial court did not err in setting an equitable amount of child support. *McKinney v. McKinney*, 94 Ark. App. 100, 226 S.W.3d 37 (2006).

Trial court lacked jurisdiction to modify payments for parochial school education because the parties' agreement on that subject was an independent contract separate from child support; tuition payments in this case did not support or care for the children where they were in addition to a support payment, and there was no deviation based on the tuition. An independent property-settlement agreement, if approved by a court and incorporated into a divorce decree, cannot be subsequently modified by the court. *Fischer v. Fischer*, 2015 Ark. App. 116, 456 S.W.3d 779 (2015).

Trial court did not abuse its discretion in reducing a father's child support obligation; there was an undisputed reduction in the father's income, and the 50-50 custody arrangement and expenses the fa-

ther paid for the children justified a substantial deviation from the chart amount. *Guin v. McWhorter*, 2017 Ark. App. 463, 528 S.W.3d 326 (2017).

Circuit court clearly erred in finding that a father's increased expenses due to his agreement to have primary custody of a child was a material change of circumstances warranting modification of child support; not only was the circumstance that the father would have more time with, and therefore more expenses for, the child known at the time of the entry of the agreed order, it was a circumstance that the father created by agreeing to it. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

Circuit court did not err in modifying a father's child support because the inconsistency between the chart amount of the mother's child support and the agreed order without supporting reasons constituted a material change in circumstances sufficient to petition for modification of child support under § 9-14-107. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

Disability.

Although the Guidelines for Child Support Enforcement do not specifically address the situation where a parent with a disability is required to provide support for an adult handicapped child who also receives disability income in his or her own right, the guidelines do provide that for Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and/or children. *Kimbrell v. Kimbrell*, 47 Ark. App. 56, 884 S.W.2d 268 (1994).

A custodial parent, who is himself disabled, is still obligated by this section to support a disabled child. *Kimbrell v. Kimbrell*, 47 Ark. App. 56, 884 S.W.2d 268 (1994).

Circuit court did not err by finding that a father's child support obligation did not automatically terminate at the age of majority due to the fact that the child at issue was disabled. There was no error in addressing the issue at the time modification was sought because the child at issue was disabled at the time he reached the age of majority and still resided with his mother at the time of the modification attempt. *Miller v. Ark. Office of Child Support En-*

forcement, 2015 Ark. App. 188, 458 S.W.3d 733 (2015).

Earning Capacity.

The court may consider the fact that a supporting spouse voluntarily changes employment so as to lessen earning capacity and, in turn, the ability to pay alimony and child support. The court may, in proper circumstances, impute an income to a spouse according to what could be earned by the use of his or her best efforts to gain employment suitable to his or her capabilities. *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988).

As there could be found no Arkansas case holding that prior tax refunds paid months before a divorce hearing must be included in income, there was no error in the chancellor's refusal to include receipt of one-half of an income tax refund in calculating income. *Jones v. Jones*, 43 Ark. App. 7, 858 S.W.2d 130 (1993).

Award of alimony to the wife was properly denied where the husband was 64 years old and in relatively poor health, unable to do much farm work other than bookkeeping; the wife was 58 years old, in good health, and was currently employed managing an RV park. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003).

In an action to increase husband's child support obligation, the trial court did not err in allowing the husband to claim the tax deduction for the parties' daughter because the trial court performed the required weighing and made the required findings when it stated that the benefit to the husband substantially outweighed the benefit to the wife. *White v. White*, 95 Ark. App. 274, 236 S.W.3d 540 (2006).

Trial court erred in determining a husband's income for child support and alimony purposes under subdivision (a)(2) of this section and Administrative Order No. 10 by failing to account for depreciation in the husband's business and using only one year of tax returns. *Wright v. Wright*, 2010 Ark. App. 250, 377 S.W.3d 369 (2010).

Fault.

Fault is not a factor in deciding whether to award alimony unless it relates to need or the ability to pay. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Eighty-five-year-old former husband was ordered to pay alimony to his former wife based on evidence that showed he

used the wife's salary to fund his extramarital relationships with several women since the diversion of funds related to the wife's need, and the amount awarded was within his ability to pay since he was still employed. *Dykman v. Dykman*, 98 Ark. App. 145, 253 S.W.3d 23 (2007).

Life Insurance.

Trial court had the authority to require the husband to maintain life insurance for the benefit of the wife and children. *Rudder v. Hurst*, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Although the circuit court had the authority to require the purchase of a life insurance policy under this section, it overreached where the wife had set forth no justification for the life insurance other than the parties' age, and had neither requested any particular amount of life insurance nor alleged that a policy should be required as a child support guarantee. *Woods v. Woods*, 2020 Ark. App. 469 (2020).

Medical Expenses.

The term "support and maintenance" includes necessary medical attention. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

Evidence sufficient to show that court should have modified decree so as to require husband to pay his wife's doctor, hospital, nursing, and medical bills. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

Rehabilitative Alimony.

After granting a husband a divorce on the ground of general indignities, a trial court did not err in its award of rehabilitative alimony to the wife; the trial court looked at the husband's four-year income picture and considered the wife's alleged physical limitations due to a prior car accident, but noted that she had worked as a substitute teacher long after the accident and that she made approximately \$50 per day doing so. *Hickman v. Hickman*, 2010 Ark. App. 704 (2010).

Language in the amended version of subsection (b) of this section does not indicate that the Legislature intended different factors to apply to rehabilitative alimony. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

Circuit court did not err in interpreting this section or in finding that a wife was

entitled to rehabilitative alimony because it specifically found after analyzing all of the appropriate factors, including the financial circumstances of both parties, that the wife's proposed plan was reasonable; the circuit court was correct in considering the wife's history as a homemaker in deciding whether she was entitled to rehabilitative alimony. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

Legislature expressly chose not to make a rehabilitative plan a mandatory prerequisite to an award of rehabilitative alimony, nor did the Legislature choose to impose specific requirements on the recipient of rehabilitative alimony, such as education or training. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

There is no requirement in this section that a rehabilitation plan contain specific goals or requirements regarding education or training on the part of the payee; subdivision (b)(3) merely allows the payor to petition the court for a review if the requirements of a rehabilitative plan are not being met, and this section does not mandate that a plan be submitted, nor does it require that any plan that is submitted contain specific, measurable requirements. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

There was no abuse of discretion by the circuit court with regard to the amount or the duration of the rehabilitative alimony awarded to the wife because it was not unreasonable to allow the wife 10 years in which to become completely self-supporting given that she had contributed to the development of the husband's career during their 12-year marriage by being the primary caregiver to their three children. *Foster v. Foster*, 2016 Ark. 456, 506 S.W.3d 808 (2016).

Calculation of the three-year rehabilitative alimony award to the wife was affirmed where, *inter alia*, the wife waiving a right to an interest in a marital asset in the property settlement agreement did not impact consideration of her earning ability and the husband's bonuses in calculating alimony; and this section does not mandate that a rehabilitative plan be submitted and the husband did not request one. *Carr v. Carr*, 2019 Ark. App. 513, 588 S.W.3d 821 (2019).

Trial court did not abuse its discretion in awarding rehabilitative alimony for

two years given the husband's superior earning capacity and the fact that the wife had to care for an adult disabled daughter and had sole custody of the two minor children. *Symanietz v. Symanietz*, 2020 Ark. App. 394 (2020) (sub. op. on reh'g).

Remarriage.

Remarriage of the divorced wife is sufficient grounds to entitle the husband to a termination of alimony payments upon proper application to the court granting the original decree but the remarriage does not of itself terminate the obligation. *Wear v. Boydstone*, 230 Ark. 580, 324 S.W.2d 337 (1959).

Subsequent judgments on original decree were not void because of remarriage of wife but husband was entitled to proceed for modification of judgments where it did not appear that chancellor was aware of wife's remarriage at the time he allowed the judgments. *Wear v. Boydstone*, 230 Ark. 580, 324 S.W.2d 337 (1959) (preceding decisions prior to 1989 amendment by No. 100).

This section clearly requires that remarriage of the person who is awarded alimony must be specifically mentioned in the divorce decree or alimony agreement if the automatic cessation of liability for alimony is not to occur upon such event. *Smith v. Smith*, 41 Ark. App. 29, 848 S.W.2d 428 (1993).

Former wife's cohabitation with another man could not be viewed as the equivalent to marriage for purposes of determining whether she was entitled to continue receiving alimony payments from the former husband where there was no evidence that the former wife had assumed the man's name, that she held herself out publicly as his wife, or that he had assumed responsibility for her care and maintenance. *Herman v. Herman*, 335 Ark. 36, 977 S.W.2d 209 (1998).

By using the words "unless otherwise ... agreed by the parties," the General Assembly clearly indicated that it is permissible for a divorcing couple to contractually agree to continue alimony even after one of the parties has children with another person and is obligated to pay child support. *Rockefeller v. Rockefeller*, 335 Ark. 145, 980 S.W.2d 255 (1998).

Husband's argument that the wife was not entitled to alimony payments under subsection (a) of this section because she

had remarried was rejected where the payments at issue were properly characterized as periodic distributions of marital property and not alimony. *Surratt v. Surratt*, 85 Ark. App. 267, 148 S.W.3d 761 (2004).

In a domestic relations case, the trial court did not err in refusing to terminate an ex-husband's alimony obligation upon his ex-wife's remarriage pursuant to this section because the parties had contracted for the ex-husband's alimony obligation to continue beyond the ex-wife's remarriage, so the statute's automatic termination provision regarding remarriage was not applicable. *Artman v. Hoy*, 370 Ark. 131, 257 S.W.3d 864 (2007).

Circuit court did not abuse its discretion in finding that the wife still had a need for alimony despite remarrying; although the wife's expenses had been reduced as a result of the marriage, she was still falling short every month, and the husband had the ability to pay the reduced amount. *Dace v. Doss*, 2017 Ark. App. 531, 530 S.W.3d 893 (2017).

Modification of subsection (b) of this section by Acts 2013, No. 1487, concerning rehabilitative alimony, did not call into question the validity of permanent alimony awards; and, in any event, in this case, the parties were divorced before August 16, 2013. *Dace v. Doss*, 2017 Ark. App. 531, 530 S.W.3d 893 (2017).

Circuit court properly denied an ex-husband's request for automatic termination of alimony payments upon the remarriage of his ex-wife; while the trial court erred in finding that the "alimony" payments in the decree were provisions of a property-settlement agreement and not, in actuality, alimony payments, both parties admitted to an agreement regarding the payment of alimony to cover the remaining balance of an automobile loan and agreed to alimony payments of a designated sum for a designated period of time. *Martens v. Blasingame*, 2018 Ark. App. 96, 541 S.W.3d 492 (2018).

Provisions of this section providing for the automatic termination of alimony when the receiving spouse remarries or cohabitates do not apply to an agreement for the payment of alimony over a term of years, even when the decree does not specifically address the effect of remarriage or cohabitation on the alimony obli-

gation. *Martens v. Blasingame*, 2018 Ark. App. 96, 541 S.W.3d 492 (2018).

Res Judicata.

Where a judgment is based upon rights conferred by a statute later declared unconstitutional, the doctrine of *res judicata* bars the relitigation of the case in which it was rendered, or the reopening of the judgment after it has become final. *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980).

Where husband waited four years after the divorce decree to argue that this section was violative of the equal protection clause of the Fourteenth Amendment, the husband plainly did not raise nor pursue the constitutional issue with diligence and the matter was *res judicata*. *Mensch v. Mensch*, 268 Ark. 1022, 597 S.W.2d 859 (Ct. App. 1980) (decision prior to 1979 amendment).

Temporary Rehabilitative Alimony.

An award of temporary rehabilitative alimony, which required the husband to pay for tuition, books, and fees for the wife to attend college for up to five years, was not an abuse of discretion, notwithstanding the wife's assertion that she was the mother of four children, had a full time job, and did not have time to go to school, where the wife was a school teacher and earned only slightly less than the husband, and the husband paid more child support than the support chart indicated, even though he had custody of one of the children. *Myrick v. Myrick*, 339 Ark. 1, 2 S.W.3d 60 (1999).

Trial court's ruling that estate was liable for husband's temporary alimony payments was reversed as, under this section, the husband's obligation for the payment of temporary alimony terminated upon his death; however, the estate was liable for the amount the husband was in arrears up to the point of his death. *Estate of Carpenter v. Carpenter*, 93 Ark. App. 441, 220 S.W.3d 263 (2005).

Torts.

A spouse involved in a divorce, having a cause of action in tort against his or her spouse, is not required to bring that action in the divorce case and can pursue the claim in circuit court. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993).

Trusts.

The statute does not give a chancellor the authority to establish a trust for a

child with the support funds paid out of the amount established for child support. *Smith v. Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000).

Written Findings.

Where noncustodial parent's income exceeds the amount for which there is a specific entry on the child-support chart, necessitating a separate calculation made in accordance with the child-support guidelines, the same imperative applies regarding written findings for deviation from the level of support indicated by the guidelines. *Stepp v. Gray*, 58 Ark. App. 229, 947 S.W.2d 798 (1997).

Trial court erred in awarding to the mother, the noncustodial parent, the right to claim a child for tax exemption purposes without providing the requisite written or specific findings to support the decision; an award of a tax exemption to a noncustodial parent resulted in a deviation from the child support chart. *Dumas v. Tucker*, 82 Ark. App. 173, 119 S.W.3d 516 (2003).

Where the husband's income of \$540,217.00 was reduced to an annual salary of \$476,171.00 and the trial court deviated downward from the family support chart in reducing his child support to \$7607.75 a month, the award was reversed because the trial court failed to make specific findings supporting a deviation. *Morehouse v. Lawson*, 94 Ark. App. 374, 231 S.W.3d 86 (2006).

Circuit court erred in ordering a father to pay child support and child support arrearage because the circuit court's order did not contain a determination of the father's income, did not refer to the guidelines pursuant to this section or the support amount required thereunder, and did not recite whether it deviated from the family-support chart as required under Administrative Order of the Supreme Court No. 10, § I; under § I, the circuit court's order shall (1) contain the circuit court's determination of the payor's income, (2) recite the amount of support required under the guidelines, and (3) recite whether the circuit court deviated from the family support chart. *Bradford v. Johnson*, 2010 Ark. App. 492 (2010).

Cited: *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970); *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982); *Reynolds v. Reynolds*, 299 Ark. 200, 771 S.W.2d 764 (1989); *Roe v. State*, 304 Ark. 673, 804 S.W.2d 708 (1991); *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Heflin v. Bell*, 52 Ark. App. 201, 916 S.W.2d 769 (1996); *Sanderson v. Harris*, 330 Ark. 741, 957 S.W.2d 685 (1997); *Guest v. San Pedro*, 70 Ark. App. 389, 19 S.W.3d 62 (2000); *Weir v. Phillips*, 75 Ark. App. 208, 55 S.W.3d 804 (2001); *In re Admin. Order No. 10: Ark. Child Support Guidelines*, 347 Ark. 1064 (2002); *Johnson v. Cotton-Johnson*, 88 Ark. App. 67, 194 S.W.3d 806 (2004).

9-12-313. Enforcement of separation agreements and decrees of court.

Courts of equity may enforce the performance of written agreements between husband and wife made and entered into in contemplation of either separation or divorce and decrees or orders for alimony and maintenance by sequestration of the property of either party, or that of his or her sureties, or by such other lawful ways and means, including equitable garnishments or contempt proceedings, as are in conformity with rules and practices of courts of equity.

History. Rev. Stat., ch. 51, § 11; C. & M. Dig., § 3509; Pope's Dig., § 4391; Acts 1941, No. 290, § 1; 1979, No. 705, § 4; A.S.A. 1947, § 34-1212.

CASE NOTES

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Agreements Between Parties.
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Decrees or Orders.
Jurisdiction.
No Binding Agreement.
Security for Payment.

Ability to Pay.

One held under order of the chancery court in a divorce which directs that he be detained in custody until he has executed a bond for performance of the court's orders in regard to the payment of alimony and suit money will not be released on habeas corpus in the circuit court at least if there is no showing that he is unable to perform the judgment of the chancery court. *Ex parte Caple*, 81 Ark. 504, 99 S.W. 830 (1907).

Court had authority to sequester and impound husband's property to secure alimony payments. *Harbour v. Harbour*, 230 Ark. 627, 324 S.W.2d 115 (1959).

This section grants to a chancery court the authority to sequester a divorced obligor's property to secure future child support payments, subject to proper notice to the obligor. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (supplemental opinion).

Income from a spendthrift trust can be reached by means of equitable garnishment or other means to satisfy a judgment for an arrearage in alimony. *Council v. Owens*, 28 Ark. App. 49, 770 S.W.2d 193 (1989).

Agreements Between Parties.

Court of equity has power to modify award for child support when required for changed conditions and best interests of child even though award is based in agreement of parties. *Reiter v. Reiter*, 225 Ark. 157, 278 S.W.2d 644 (1955).

Chancery court may enforce by contempt proceedings property settlements made part of divorce decree by reference. *Thomas v. Thomas*, 246 Ark. 1126, 443 S.W.2d 534 (1969).

Trial court which granted divorce has no power to issue contempt citation for failure to comply with property settlement

agreement which was not incorporated in divorce decree. *Henry v. Henry*, 247 Ark. 771, 447 S.W.2d 657 (1969).

Chancery courts are no longer to recognize private agreements modifying the amount of child support after July 20, 1987. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Questions relating to the construction of separation agreements between husband and wife are governed by the rules generally applicable to other contracts. *Krupnick v. Ray*, 61 F.3d 662 (8th Cir. 1995).

A chancellor had power to enforce the parties' separation agreement, even though no decree of divorce had been entered, where the agreement indicated that it was entered into in contemplation of separation and determined the rights and obligations of the parties during their separation. *Grider v. Grider*, 62 Ark. App. 99, 968 S.W.2d 653 (1998).

Because it is within the trial court's sound discretion to approve, disapprove, or modify a separation agreement the court also has the authority to refuse to enforce the agreement. *Rutherford v. Rutherford*, 81 Ark. App. 122, 98 S.W.3d 842 (2003).

In a divorce case, the court erred by ordering the husband to pay a lump sum in monthly installments because it resulted in an impermissible modification of the parties' property settlement agreement; the fact that the husband entered into an agreement that later appeared improvident was no ground for relief. *Tiner v. Tiner*, 2012 Ark. App. 483, 422 S.W.3d 178 (2012).

Trial court's order regarding repayment of an arrearage did not modify the terms of the parties' alimony agreement because the payment schedule was merely a method of enforcing the husband's agreement to pay the wife monthly alimony. *Jenkins v. Jenkins*, 2017 Ark. App. 642 (2017).

Bankruptcy.

Payments ordered pursuant to a divorce decree are debts to the spouse for bankruptcy purposes. *Johnston v. Henson*, 197 B.R. 299 (Bankr. E.D. Ark. 1996); *Schmitt v. Eubanks*, 197 B.R. 312 (Bankr. W.D. Ark. 1996).

Change of Circumstances.

Trial court found that, due to the reconciliation, passage of time, and later acquired property, equity demanded that the Marital Dissolution Agreement be deemed null and void, and the husband did not argue that he was not given proper credit for the payments he made pursuant to the agreement, and nothing showed that the ruling was clearly erroneous; it was within the trial court's discretion to reject the agreement due to changed circumstances. *Walls v. Walls*, 2014 Ark. App. 729, 452 S.W.3d 119 (2014).

Decrees or Orders.

After a decree has been rendered for permanent alimony, payment thereof may be enforced by attachments or orders committing for contempt. *Ex parte Hall*, 125 Ark. 309, 188 S.W. 827 (1916).

Where a decree of divorce ordered a husband to pay a certain amount as alimony to the wife and the husband in a proceeding to compel performance of the order admitted that he had sufficient funds at the time of the decree, it devolved upon him to account for them and the chancellor was not bound to accept as true his unsupported statement that the funds had been stolen from him. *East v. East*, 148 Ark. 143, 229 S.W. 5 (1921).

Courts of chancery have the inherent power to enforce their decrees awarding alimony and may do so by punishing the recalcitrant husband as for contempt. *Ex parte Coulter*, 160 Ark. 550, 255 S.W. 15 (1923).

There was sufficient evidence of husband's willful disobedience of the court ordered maintenance and support to hold him in contempt of court under this section. *Barker v. Barker*, 271 Ark. 956, 611 S.W.2d 787 (1981).

Jurisdiction.

Where the court had made an order for monthly payments to the wife for maintenance, the fact that an appeal had been prayed did not deprive the court of jurisdiction to enforce its order. *Gray v. Gray*, 202 Ark. 1154, 155 S.W.2d 575 (1941).

Pursuant to parties' property-settlement agreement, which was incorporated into their divorce decree, as the husband

agreed to retire the debts of the parties' businesses, a court had authority to simply enforce its own decree along with the performance of the written agreement pursuant to this section. *French v. French*, 2011 Ark. App. 612 (2011).

Trial court had subject matter jurisdiction to preside over a wife's action seeking to enforce the terms of a property settlement and find the husband in contempt given the authority granted to courts of equity under this section to enforce written agreements between husbands and wives. *Peace v. Peace*, 2016 Ark. App. 406, 500 S.W.3d 169 (2016).

Trial court had subject matter jurisdiction to enter a contempt order because this section granted the court the authority to enforce written agreements between spouses made in contemplation of divorce; the husband was on notice of the allegations, and his failure to raise any notice or procedural defect waived the argument for purposes of appeal. *Jenkins v. Jenkins*, 2017 Ark. App. 642 (2017).

No Binding Agreement.

Trial court erred in its conclusion that the wife was a party to a binding agreement, because the parties had no written agreement under which the trial court could order performance, when the parties initial recitation of their agreement was unilateral and was not conducted in open court; the wife never assented to the oral stipulations of the agreement in open court, and vigorously refuted the existence of an agreement. *Jenkins v. Jenkins*, 103 Ark. App. 21, 285 S.W.3d 704 (2008).

Security for Payment.

The chancery court in a proper case may require a recalcitrant husband to furnish security for payment of future installments of alimony. *Ex parte Caple*, 81 Ark. 504, 99 S.W. 830 (1907); *Ex parte Coulter*, 160 Ark. 550, 255 S.W. 15 (1923).

Cited: *Reynolds v. Tassin*, 212 Ark. 1020, 208 S.W.2d 987 (1948); *Lewis v. Lewis*, 222 Ark. 743, 262 S.W.2d 456 (1953); *Strasner v. Strasner*, 232 Ark. 478, 338 S.W.2d 679 (1960); *Latty v. Latty*, 235 Ark. 802, 362 S.W.2d 676 (1962); *Gooch v. Gooch*, 10 Ark. App. 432, 664 S.W.2d 900 (1984).

9-12-314. Modification of allowance for alimony and maintenance — Child support.

(a) The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance as may be proper and may order any reasonable sum to be paid for the support of the wife or the husband during the pending of a complaint for a divorce.

(b) Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or through the Arkansas Child Support Clearinghouse shall be final judgment as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c) The court may not set aside, alter, or modify any decree, judgment, or order that has accrued unpaid support prior to the filing of the motion. However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

History. Rev. Stat., ch. 51, § 12; C. & M. Dig., § 3510; Pope's Dig., § 4392; Acts 1979, No. 705, § 5; A.S.A. 1947, § 34-1213; Acts 1987, No. 1057, § 1; 1997, No. 1296, § 11.

Cross References. Uniform Interstate Family Support Act, § 9-17-101 et seq.

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Applicability.

The 1979 amendment to this section could not be retroactively applied, absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d 21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Agreements Between Parties.

The chancery court cannot modify a contract for alimony in a specific sum. *Pryor v. Pryor*, 88 Ark. 302, 114 S.W. 700 (1908) (decision prior to 1987 amendment); *Meffert v. Meffert*, 118 Ark. 582, 177 S.W. 1 (1915).

An alimony agreement entered into between the parties prior to the decree, but subsequently made a part of the divorce decree, could not be modified. *McCue v. McCue*, 210 Ark. 826, 197 S.W.2d 938 (1946) (decision prior to 1987 amendment).

The power of a court to modify a decree for the support of minor children cannot be defeated by an agreement between the parents even when the agreement is incorporated in the decree. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Where the parties to a divorce action merely agree upon the amount the court should fix by its decree as alimony or support, without intending to confer on the wife an independent cause of action, the agreement becomes merged in the decree and loses its contractual nature so that a court may modify the decree. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Where a decree for alimony or support is based on an independent contract between parties which is incorporated in the decree and approved by the court as an independent contract, it does not merge into the court's award and is not subject to modification except by consent of the parties. *Lively v. Lively*, 222 Ark. 501, 261 S.W.2d 409 (1953).

Waiver, signed by husband alone, which provided that amount payable for support of child and alimony to wife was to be modified if there was a change in conditions, was not binding on the court. *Adams v. Adams*, 223 Ark. 656, 267 S.W.2d 778 (1954).

Where only evidence in the record of an agreement between the parties as to alimony and support was a recital in the decree of the fact and terms of the agreement, agreement not regarded as an independent contract but merely as a stipulation as to the amounts to be allowed by the court and, therefore, subject to modification. *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970).

Evidence insufficient to show that divorce decree was an independent contract between parties and therefore alimony award could be modified. *Songer v. Songer*, 267 Ark. 1075, 594 S.W.2d 33 (Ct. App. 1980) (preceding decisions prior to 1987 amendment).

Prior to 1987, agreements between former spouses reducing the amount of child support payments did not bind the court, but the court could recognize such an agreement (1) if the agreement was supported by a valid consideration, or (2) if it were inequitable to do otherwise; thus,

where the mother gave up the right to 32% of the father's income as previously ordered but gained an increase in the fixed amount of support from \$200 to \$250 per month over a period of time there was valid consideration and the chancellor did not err in recognizing the agreement as to the amount of arrearages due before the 1987 amendment to this section. *Sullivan v. Edens*, 304 Ark. 133, 801 S.W.2d 32 (1990), superseded by statute as stated in, *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992), superseded by statute as stated in, *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

Whether provisions regarding child support are in a divorce decree or property settlement contract, the court always retains authority and jurisdiction to modify child support obligations. *Warren v. Kordsmeier*, 56 Ark. App. 52, 938 S.W.2d 237 (1997).

Trial court erroneously recognized agreement to reduce child support between parties; evidence on record did not show equitable estoppel on the part of the father. *Shroyer v. Kauffman*, 75 Ark. App. 267, 58 S.W.3d 861 (2001).

Parties' temporary-support agreement was not an independent contract and was modifiable by the circuit court on an appropriate change in circumstances to be determined by the circuit court, including a change in the parties' employment circumstances, because the record did not indicate that the parties intended for the agreement to be an independent contract. Instead, the parties merely had an agreement to stipulate to some issues on a temporary basis to avoid putting on proof until the final hearing. *Chambers v. Chambers*, 2017 Ark. App. 429, 527 S.W.3d 1 (2017).

Application to Modify.

Decrees for continuing alimony are always subject to the modification of the court upon application of either party. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Notice of application to modify allowance of alimony need only be such as is reasonably calculated to give the opposite party knowledge of the proceeding and opportunity to be heard. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Where modification of allowance of alimony is sought, the application should be

made in the original suit and not in an independent proceeding. *Schley v. Dodge*, 206 Ark. 1151, 178 S.W.2d 851 (1944).

Petition for modification is not precluded by petitioner's arrearage in alimony and child support payments. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

Order awarding mother past-due child support was upheld because the father had not filed any motion to modify the order on the basis that a later case prohibited child support payments based on income from federal SSI benefits. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004), *aff'd*, 363 Ark. 96, 211 S.W.3d 508 (2005).

Calculation.

Trial court erred when it failed to include a prior judgment entered in favor of a mother in a child support case, pursuant to this section and § 9-14-234, when it was calculating a father's arrearage; a remand was necessary to determine whether the judgment was applied to the arrearage. If the amount was not applied, the arrearage amount had to be amended to reflect an inclusion of the judgment amount. *Office of Child Support Enforcement v. Harper*, 2013 Ark. App. 171, 426 S.W.3d 544 (2013).

Change in Conditions.

—In General.

Allowance of alimony is subject to modification by the court to meet changed conditions. *McConnell v. McConnell*, 98 Ark. 193, 136 S.W. 931 (1911).

When a decree is entered fixing and allowing alimony for the support and maintenance of the wife, that decree limits and defines the extent of the husband's obligation in that respect, but the allowance is always subject to modification by the court to meet the changed situation and conditions of the parties in interest. *Pledger v. Pledger*, 199 Ark. 604, 135 S.W.2d 851 (1940).

The amount allowed for child support is subject to modification when required by changed conditions. *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962).

The father could not of his own volition reduce the monthly payment made for his children when one of his children became of age; the court alone had the right to change the amount of the award for the

support of the minor children. *Jerry v. Jerry*, 235 Ark. 589, 361 S.W.2d 92 (1962).

A decree for maintenance and support is always subject to modification by application of either party upon a showing of a change in circumstances. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

—Not Shown.

Former husband was not entitled to cease payment of alimony where former wife lived with a man but did not marry him. *Byrd v. Byrd*, 252 Ark. 202, 478 S.W.2d 45 (1972).

A change in circumstances sufficient to support a modification of alimony was not shown where the former wife began to cohabitate with another man in her home, but the former wife's financial condition was the same as it was at the time of the divorce and the man's financial contributions to household expenses were no greater than contributions made by the former wife's father, who lived with her from the time of the divorce until his death. *Herman v. Herman*, 335 Ark. 36, 977 S.W.2d 209 (1998).

Husband did not show that the trial court's decision denying a modification in alimony was arbitrary or groundless where there was no evidence or allegation that the wife did not continue to have a need for \$1,059 in monthly alimony, and despite being unemployed, the husband had the ability to pay from the resources available to him, including retirement savings and other accounts. *Becker v. Becker*, 2019 Ark. App. 230, 575 S.W.3d 608 (2019).

Husband was not entitled to a reduction or elimination of the alimony awarded to the wife based on evidence the wife's situation had improved significantly while his ability to pay had declined because the wife's income remained limited and considerably less than the husband's income. *Cherry v. Cherry*, 2020 Ark. App. 294, 603 S.W.3d 585 (2020), review granted, 2020 Ark. LEXIS 315 (Sept. 24, 2020).

—Remarriage.

Chancellor had jurisdiction to change the order providing for maintenance where wife remarried. *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958).

Remarriage is a circumstance to be considered in determining a change in cir-

cumstances. *Barnes v. Barnes*, 246 Ark. 624, 439 S.W.2d 37 (1969).

—Shown.

Change in conditions held to warrant modification. *Ray v. Ray*, 205 Ark. 765, 170 S.W.2d 681 (1943).

Chancellor did not abuse his discretion in holding that there has been a change in wife's circumstances. *Bracken v. Bracken*, 302 Ark. 103, 787 S.W.2d 678 (1990).

Trial court did not abuse its discretion in awarding the wife an increase in alimony where the wife was being treated for the progressive disease of rheumatoid arthritis, which her doctor testified had become worse since the last hearing, and she was unable to pay for the treatment at this time; furthermore, her doctor testified that it was his opinion that she was unable to hold a regular job, and in setting the \$4500 monthly alimony, the trial court took into consideration both the wife's need for a new vehicle and some major home repairs that were going to need to be made. *Matthews v. Matthews*, 2009 Ark. App. 400, 322 S.W.3d 15 (2009).

Continuing Jurisdiction.

An order for alimony may be set aside at a subsequent term. *Poe v. Poe*, 93 Ark. 426, 124 S.W. 1029 (1910).

Court that granted divorce to husband had jurisdiction to modify the order after it had been affirmed on appeal and mandate was filed in the chancery court after institution of proceeding to modify. *Sheppard v. Sheppard*, 192 Ark. 298, 90 S.W.2d 960 (1936).

The chancery court granting a divorce has continuing jurisdiction to modify the original allowance for maintenance of the minor children of the divorced parents and will do so upon a showing of changed conditions. *Watnick v. Bockman*, 209 Ark. 696, 192 S.W.2d 131 (1946).

The chancery court has continuing jurisdiction to modify child support and custody orders, but only when the moving party has demonstrated a change in circumstances requiring modification. *Slaton v. Slaton*, 330 Ark. 287, 956 S.W.2d 150 (1997).

Duration of Alimony.

A decree ordering that alimony would terminate only upon the death of either party violated statutory and case authority that, in the absence of a settlement

agreement to the contrary, an award of alimony is always subject to modification, upon application of either party, notwithstanding that the decree also stated that the court would retain jurisdiction of the alimony issue. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000).

Failure to Modify.

Since the defendant did not file a motion to modify child support when his son turned 18, the chancellor should not have retroactively reduced the defendant's child support arrearages which had become final judgments. *Ark. Dep't of Human Servs. v. Porter*, 306 Ark. 190, 810 S.W.2d 949 (1991).

Trial court did not err in awarding mother past-due child support where the original order of support in 1995 was made prior to the ruling in *Davis*, which held that Arkansas courts could not order child support payments based on income from federal SSI benefits; further, because the case was a one-issue case, which was tried on the pleadings and did not involve child custody, the trial judge did not abuse his discretion in denying father's motion to transfer. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004), *aff'd*, 363 Ark. 96, 211 S.W.3d 508 (2005).

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney's fees was barred by *res judicata*, and *res judicata* also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under this section and § 9-14-234. *Williams v. Nesbitt*, 2012 Ark. App. 408, 421 S.W.3d 320 (2012).

Insurance Policy.

Provisions that award the ex-wife the benefit of some interest in a policy of insurance on an ex-husband's life do not violate public policy, because the insurance policy is not a wagering policy taken out by one with no insurable interest on the life of another, but is one taken out by the husband, who may take out a policy on his own life and name anyone he pleases as beneficiary. *Dodson v. Dodson*, 37 Ark. App. 86, 825 S.W.2d 608 (1992).

Where a written property settlement in contemplation of divorce provided the

husband would maintain his present life insurance program and name the wife irrevocable beneficiary, the insurance policy was a bargained-for item and therefore should be replaced if allowed to lapse. *Dodson v. Dodson*, 37 Ark. App. 86, 825 S.W.2d 608 (1992).

Marital Property.

To the extent a spouse acquires an enforceable right during the marriage to recover fees under a contingency fee contract, the spouse acquired marital property; any difficulty in valuing contingency fee contracts may be solved by reserving jurisdiction in the trial court in order to await the outcome of the underlying actions. *McDermott v. McDermott*, 336 Ark. 557, 986 S.W.2d 843 (1999).

Credit card debts incurred by one party during the period of the parties' legal separation were marital debts that the chancellor had discretion to divide between the parties. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

Funds acquired by one party and deposited into the parties' joint checking account prior to their divorce are marital property subject to division by the court. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

Medical Insurance.

Even though wife filed no claim for relief in response to husband's motion for modification of support order, husband was properly ordered to continue to maintain a policy of hospitalization and medical insurance on the eldest son. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

Past Due Support.

Mother estopped from collecting past due child support from father, where the parents continued to live together after the divorce, and the father was the children's primary supporter subsequent to the divorce and until the parents separated. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

A child support judgment would also be subject to the equitable defenses that apply to all other judgments. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

Real Party in Interest.

For purposes of determining the real party in interest in a situation where the

custodial parent has assigned his or her child support rights to the Office of Child Support Enforcement, it is immaterial whether the custodial parent is receiving public assistance on behalf of the child. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

Cited: *Kirkland v. Wright*, 247 Ark. 794, 448 S.W.2d 19 (1969); *Carter v. Clau-*

sen, 263 Ark. 344, 565 S.W.2d 17 (1978); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Boyles v. Boyles*, 268 Ark. 120, 594 S.W.2d 17 (1980); *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990); *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998); *Dunavant v. Dunavant*, 66 Ark. App. 1, 986 S.W.2d 880 (1999).

9-12-315. Division of property — Definition.

(a) At the time a divorce decree is entered:

(1)(A) All marital property shall be distributed one-half (½) to each party unless the court finds such a division to be inequitable. In that event the court shall make some other division that the court deems equitable taking into consideration:

- (i) The length of the marriage;
- (ii) Age, health, and station in life of the parties;
- (iii) Occupation of the parties;
- (iv) Amount and sources of income;
- (v) Vocational skills;
- (vi) Employability;

(vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;

(viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and

(ix) The federal income tax consequences of the court's division of property.

(B) When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter;

(2) All other property shall be returned to the party who owned it prior to the marriage unless the court shall make some other division that the court deems equitable taking into consideration those factors enumerated in subdivision (a)(1) of this section, in which event the court must state in writing its basis and reasons for not returning the property to the party who owned it at the time of the marriage;

(3)(A) Every such final order or judgment shall designate the specific real and personal property to which each party is entitled.

(B) When it appears from the evidence in the case to the satisfaction of the court that the real estate is not susceptible of the division as provided for in this section without great prejudice to the parties interested, the court shall order a sale of the real estate. The sale shall be made by a commissioner to be appointed by the court for that purpose at public auction to the highest bidder upon the terms and conditions and at the time and place fixed by the court. The proceeds

of every such sale, after deducting the cost and expenses of the sale, including the fee allowed the commissioner by the court for his or her services, shall be paid into the court and by the court divided among the parties in proportion to their respective rights in the premises.

(C) The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten (10) days' notice to the opposite party. Such order, judgment, or decree shall be a bar to all claims of dower or curtesy in and to any of the lands or personalty then owned or thereafter acquired by either party; and

(4) When stocks, bonds, or other securities issued by a corporation, association, or government entity make up part of the marital property, the court shall designate in its final order or judgment the specific property in securities to which each party is entitled, or after determining the fair market value of the securities, may order and adjudge that the securities be distributed to one (1) party on condition that one-half ($\frac{1}{2}$) the fair market value of the securities in money or other property be set aside and distributed to the other party in lieu of division and distribution of the securities.

(b) For the purpose of this section, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of divorce from bed and board;

(4) Property excluded by valid agreement of the parties;

(5) The increase in value of property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor;

(6) Benefits received or to be received from a workers' compensation claim, personal injury claim, or Social Security claim when those benefits are for any degree of permanent disability or future medical expenses; and

(7) Income from property owned prior to the marriage or from property acquired by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a

deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor.

(c) The court is not required to address the division of property at the time a divorce decree is entered if either party is involved in a bankruptcy proceeding.

History. Civil Code, § 461; Acts 1891, No. 26, § 1, p. 27; 1893, No. 102, § 1, p. 176; C. & M. Dig., § 3511; Pope's Dig., § 4393; Acts 1953, No. 348, § 3; 1979, No. 705, § 1; 1981, No. 69, § 1; 1981, No. 714, § 2; 1981, No. 798, §§ 1, 2; 1981, No. 799, §§ 1, 2; 1983, No. 369, §§ 1, 2; A.S.A. 1947, § 34-1214; Acts 1987, No. 676, § 1; 1989, No. 366, § 1; 1991, No. 1167, § 1; 1993, No. 1067, § 1; 2001, No. 1671, § 1.

A.C.R.C. Notes. As amended by Acts 2001, No. 1671, subsection (b) contained an additional subdivision which read: "The changes to this subsection (b) passed by the 83rd General Assembly meeting in Regular Session shall not apply to cases based upon facts which occurred prior to September 1, 2001."

Publisher's Notes. Acts 1981, No. 798,

§ 2, and No. 799, § 2, provided, in part, that the provisions of subdivisions (a)(1) and (b)(3) shall not be applicable to cases pending in the courts of this state on March 28, 1981, nor to any case pending in the courts of this state on March 28, 1981, where that case is dismissed and a case involving the same parties and issues is refiled within ninety (90) days after the dismissal of the original case.

Acts 1983, No. 369, § 2, provided, in part, that the provisions of subdivision (a)(4) shall be applicable to all cases pending on March 8, 1983, and all cases filed thereafter.

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Note. — Some of the following cases were decided prior to the 1979 amendment to this section which made the section apply equally to both husband and wife and provided for an equal division of property rather than the $\frac{1}{3}$ of the husband's real and personal property previously allotted to the wife.

Constitutionality.

This section is not violative of the Equal Protection Clause, either facially or as applied. *Hamilton v. Hamilton*, 317 Ark. 572, 879 S.W.2d 416 (1994).

The classification of a pension plan as marital property does not violate the equal protection clause. *Skelton v. Skelton*, 339 Ark. 227, 5 S.W.3d 2 (1999).

In General.

Section 1-2-120(c) which provides that no action pending at the time any statutory provision is repealed shall be affected by the repeal was not applicable to the amendment of the section by Acts 1979, No. 705, which made this section gender-neutral, as the amendment did not repeal the prior statutes, but merely replaced statutes already clearly void for unconstitutionality. *Noble v. Noble*, 270 Ark. 602, 605 S.W.2d 453 (1980).

In a divorce action, the trial court is not required to divide in kind every piece of personal property. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).

Although Arkansas is not truly a community property state, this section makes it so for all practical purposes when it is utilized in dissolution of marriage and distribution of assets. *Potter v. Potter*, 280 Ark. 38, 655 S.W.2d 382 (1983), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), overruled in part, *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Independent action, subsequent to divorce decree, does not lie for division of marital property, for this section mandates that marital property be divided at the time the divorce is granted. Arkansas Supreme Court has carved out exceptions to the requirement that marital property

be divided at the time the divorce decree is entered in cases where the parties specifically agree to postpone division of the property to a later date and where a divorce is granted by a foreign court lacking jurisdiction to divide Arkansas marital property. *Mitchell v. Meisch*, 22 Ark. App. 264, 739 S.W.2d 170 (1987).

This section does not compel mathematical precision in the distribution of property, rather, it simply requires that marital property be distributed equitably. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

Construction.

Court did not abuse its discretion in refusing to reopen the record or in denying the motion for new trial, because while subdivision (a)(1) of this section required that property be valued at the time of the divorce, it did not require the trial court to reopen the record or set aside a decree and hold an additional hearing for the purpose of receiving the most up-to-date evidence. *Dew v. Dew*, 2012 Ark. App. 122, 390 S.W.3d 764 (2012).

“Active appreciation” rule conflicts with the plain language of subdivision (b)(5) of this section, which provides that the “increase in value of property acquired prior to marriage” is nonmarital; therefore, *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987), *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006), and *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), are overruled to the extent they redefine marital property through the “active appreciation” rule. *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Purpose.

The purpose of this section is to effect the equitable distribution of property upon divorce. *Stover v. Stover*, 287 Ark. 116, 696 S.W.2d 750 (1985); *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986); *Yockey v. Yockey*, 25 Ark. App. 321, 758 S.W.2d 421 (1988).

Applicability.

Act 1979, No. 705, which made this section gender-neutral, could not be retroactively applied absent clear legislative intent to that effect, and since there was no indication of such intent, the act was only prospective in its application. *Sweeney v. Sweeney*, 267 Ark. 595, 593 S.W.2d

21 (1980), overruled in part, *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Acts 1979, No. 705, which amended this section, did not abolish § 9-12-317, the entirety property statute which had no constitutional infirmities as did this section; accordingly, this section does not apply to property owned as tenants by the entirety. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (decided prior to 1997 amendment, adding § 9-12-317(c)).

Acts 1979, No. 705, which amended this section, was applicable to property division where memorandum opinion was issued prior to amendment but final decree was issued after amendment. *Chrestman v. Chrestman*, 4 Ark. App. 281, 630 S.W.2d 60 (1982) (decided prior to 1997 amendment, adding § 9-12-317(c)).

This section is not applicable to property held as tenants by the entirety. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992) (decided prior to 1997 amendment, adding § 9-12-317(c)).

Although the chancellor’s determinations that the houseboat purchased with husband’s inheritance was marital property and the joint checking account was husband’s separate property may have appeared inconsistent, they underscored the fine factual distinctions that often characterize marital-property divisions. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

Statute did not apply to property held as tenants by the entirety. *Banks v. Evans*, 347 Ark. 383, 64 S.W.3d 746 (2002).

Arkansas law was clear that the law regarding marital property did not apply in situations other than divorce; thus, defendant’s wife could not rely on the law of Arkansas marital property to establish an ownership interest in the 93 weapons. *United States v. One Assortment of 93 NFA Regulated Weapons*, 897 F.3d 961 (8th Cir. 2018).

Adequacy of Division.

For cases discussing adequacy or appropriateness of specific divisions of property in particular circumstances, see *Morgan v. Morgan*, 193 Ark. 454, 100 S.W.2d 978 (1937); *Coltharp v. Coltharp*, 218 Ark. 215, 235 S.W.2d 884 (1951); *Turner v. Turner*, 219 Ark. 259, 243 S.W.2d 22 (1951); *Hewitt v. Morgan*, 220 Ark. 123, 246 S.W.2d 423 (1952); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *Koury v.*

Koury, 230 Ark. 536, 323 S.W.2d 554 (1959); *Palmer v. Palmer*, 238 Ark. 690, 384 S.W.2d 256 (1964); *Mickle v. Mickle*, 252 Ark. 468, 479 S.W.2d 563 (1972); *Grant v. Grant*, 254 Ark. 1060, 497 S.W.2d 255 (1973); *Johnson v. Johnson*, 265 Ark. 925, 582 S.W.2d 32 (1979); *Gross v. Gross*, 266 Ark. 186, 585 S.W.2d 14 (1979); *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982); *Belanger v. Belanger*, 276 Ark. 522, 637 S.W.2d 557 (1982); *Duncan v. Duncan*, 11 Ark. App. 25, 665 S.W.2d 893 (1984).

The fact that one spouse made contributions to certain property does not necessarily require that those contributions be recognized in the property division upon divorce. *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986).

Where the chancellor stated he was relying on the reasons cited in subdivision (a)(1) of this section for not equally dividing the marital property, and the main reasons were that it was the wife who contributed to their acquisition and the husband was able to support himself, he then read into the record the nine factors listed under this subdivision, and the decree stated the grounds for the unequal division were those stated orally by the court at the conclusion of the trial, the chancellor sufficiently complied with subdivision (a)(1) of this section in stating his reasons for not equally dividing the marital property at the conclusion of the trial. *Jones v. Jones*, 17 Ark. App. 144, 705 S.W.2d 447 (1986).

If the chancellor intended that improvements to the wife's separate property be held to be marital property, he failed to adequately explain the basis for his unequal division, as required by subdivision (a)(1) of this section; therefore, the action was remanded. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

Where appellate court was unable to determine whether it was error for the trial court to make what was essentially a grossly disproportionate distribution of the marital retirement assets remaining after the settlement in favor of a wife because the record was not fully developed, reversal of the trial court's division of the parties' retirement and pension funds was warranted; on remand, the trial court could permit the introduction of such additional evidence as was necessary to make findings regarding the valuation

of all of the parties' assets and the factors to be considered, clearly articulate whether it was making an equal or unequal distribution of assets and, if unequal, the reasons why such distribution was equitable. *Copeland v. Copeland*, 84 Ark. App. 303, 139 S.W.3d 145 (2003).

Trial court's property distribution in divorce proceedings was not improper because, although the wife argued that the husband's explanations about undisclosed accounts were inconsistent, the trial court nonetheless clearly accepted his testimony that the funds in the accounts belonged to a company and not to him personally; the trial court's conclusions were not clearly erroneous. *Conlee v. Conlee*, 370 Ark. 89, 257 S.W.3d 543 (2007).

After granting a husband a divorce on the ground of general indignities, a trial court did not err in its award of rehabilitative alimony to the wife; the trial court looked at the husband's four-year income picture and considered the wife's alleged physical limitations due to a prior car accident, but noted that she had worked as a substitute teacher long after the accident and that she made approximately \$50 per day doing so. *Hickman v. Hickman*, 2010 Ark. App. 704 (2010).

If the circuit court intended to give each party an equal share, the problem was the husband was given all income-producing assets, while the wife was forced to rely on a series of periodic payments, requiring her to wait years to receive the full value of her share, which appeared contrary to the intent of this section, and remand was required; by allowing the husband to pay the wife for her share over an extended period of time, they would be forced to maintain a connection. Moreover, the circuit court failed to consider the time value of money or order security on the award. *Farrell v. Farrell*, 2014 Ark. App. 601 (2014).

Ordering the husband to reimburse the wife \$1,500 was not error where, despite the lack of an exacting calculation, the husband admitted taking trips and spending money on his girlfriend and her children during the marriage. *Karolchyk v. Karolchyk*, 2018 Ark. App. 555, 565 S.W.3d 531 (2018).

Award of the wife's moving expenses was affirmed where the wife had moved out of the marital home because of the husband's adultery, and the court had

discussed in detail the wife's poor health and upcoming needs. *Karolchyk v. Karolchyk*, 2018 Ark. App. 555, 565 S.W.3d 531 (2018).

Trial court did not clearly err in awarding the wife compensation for the marital contributions toward the improvements made to the husband's separate property and any reduction in debt on the home; the husband put on no evidence to demonstrate that the reduction in debt was not attributable to marital funds. *Karolchyk v. Karolchyk*, 2018 Ark. App. 555, 565 S.W.3d 531 (2018).

Adverse Possession.

Where wife pursuant to divorce decree was granted "use and occupancy of premises during her lifetime" grantee of wife under warranty deed could not establish adverse possession as against husband, since latter was not entitled to possession until death of wife. *Pierce v. Lowe*, 221 Ark. 796, 256 S.W.2d 43 (1953).

Agreement of Parties.

A wife's agreement to relinquish all rights to her husband's property, if made for a wholly inadequate consideration, will be set aside on that account. *Leonard v. Leonard*, 101 Ark. 522, 142 S.W. 1133 (1912).

A divorce, reciting that alimony should be paid in full accord of the wife's right, title and interest in any property of the husband, was held to show that the parties agreed on a sum to be paid in lieu of the wife's right to a division of property under this section. *Erwin v. Erwin*, 179 Ark. 192, 14 S.W.2d 1100 (1929).

Where husband agreed that wife should have half of his property he became trustee as to wife's rights under the agreement and the court had power to compel specific performance against contention that wife was confined to an action for debt. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

Reconciliation agreement failed to effectively exclude the subject properties from the marital property law. *Schichtel v. Schichtel*, 3 Ark. App. 36, 621 S.W.2d 504 (1981).

There are two types of agreements concerning the payment of alimony: (1) the agreement on the amount of alimony which is an independent contract which cannot be modified by the court; and (2) an

agreement upon an amount that the court should fix as alimony and which the court can modify. *Shipley v. Shipley*, 305 Ark. 257, 807 S.W.2d 915 (1991).

Trial court erred by awarding a former wife an interest in land that her former husband inherited from his mother because a postnuptial agreement was not binding since the parties' marriage was not adequate consideration; moreover, there were no mutual obligations since the wife was not required to do anything. *Simmons v. Simmons*, 98 Ark. App. 12, 249 S.W.3d 843 (2007).

Case law does not require a court to consider the factors in this section when deciding whether to enforce a settlement agreement. A circuit court must follow this section in dividing the marital property only if it concludes that a settlement agreement is unenforceable. *Fallin v. Fallin*, 2016 Ark. App. 179, 492 S.W.3d 525 (2016).

Circuit court did not err in enforcing the couple's property settlement agreement where case law did not require consideration of the factors in this section in deciding whether to enforce such an agreement; there was no requirement that the settlement agreement had to equitably divide the property. *Fallin v. Fallin*, 2016 Ark. App. 179, 492 S.W.3d 525 (2016).

Subdivisions (a)(1) and (b)(4) of this section provide that at the time a divorce decree is entered, all marital property shall be distributed one-half to each party unless the court finds such a division to be inequitable except property excluded by valid agreement of the parties. Thus, this section contemplates partial settlement agreements. *Fallin v. Fallin*, 2016 Ark. App. 179, 492 S.W.3d 525 (2016).

Circuit court did not err in enforcing the couple's property settlement agreement with respect to ownership of a tractor company where the agreement clearly contemplated only the shares of the tractor company owned by the husband. *Fallin v. Fallin*, 2016 Ark. App. 179, 492 S.W.3d 525 (2016).

This section did not apply to the proceeding because the parties' retirement accounts were agreed to be marital and evenly divisible, and the 2012 settlement agreement equated to a stipulation of fact between the parties; appellant entered into a binding contractual agreement that

was approved by the trial court in the divorce decree, and that he found years later that the agreement appeared to be improvident was no ground for relief. *Goodwin v. Goodwin*, 2016 Ark. App. 233, 490 S.W.3d 661 (2016).

Authority of Court.

The chancellor is given broad powers under this section to distribute all property in divorce, nonmarital as well as marital, to achieve an equitable division; the only requirement is that if he divides marital property other than evenly, or nonmarital property other than by returning it to the original owner, he will consider the nine factors specified in the statute, and fully explain his reasons for the record. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

The marital-property law vests in the trial court a marked measure of flexibility in apportioning the couple's total assets. *Canady v. Canady*, 290 Ark. 551, 721 S.W.2d 650 (1986).

It is not an abuse of chancellor's discretion to ascertain extent of marital property as of date of the divorce, and evaluate it as of that date as well. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Chancellor has no authority to dispose of property rights in an award of separate maintenance. *Moore v. Moore*, 21 Ark. App. 165, 731 S.W.2d 215 (1987).

The chancellor is given broad powers under this section to distribute all property in divorce, nonmarital as well as marital, to achieve an equitable division. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

Chancellor's award on remand need not necessarily correspond to the findings regarding the extent of the separate and marital interests of the parties. *Cate v. Cate*, 35 Ark. App. 79, 812 S.W.2d 697 (1991).

Although this section provides a list of factors for the court to consider in dividing the marital property, the trial court did not err in permitting the parties to equally share in the proceeds of the sale of the marital home and the equity resulting from the wife's payment of the mortgage during the divorce proceedings because a trial court has discretion to determine whether an offset is appropriate when parties to a divorce expend funds to preserve marital property during the pen-

dency of proceedings; however, the parties were ordered to equally share expenses for repair to the marital residence that exceeded the minimum amount specified by the trial court. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005).

Trial court has the flexibility to distribute both marital and nonmarital property to make an equitable division of marital property. *Marks v. Marks*, 2014 Ark. App. 174, 432 S.W.3d 698 (2014).

Because the circuit court was required to reexamine the division of property pursuant to the mandate, it was entitled to also consider the division of debts, including the deficiency of the marital home. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

Conflict of Laws.

Where a divorce decree rendered in another state divested the wife of all right and title in the husband's real estate, the wife was not entitled to husband's land in Arkansas since this section has no application to decrees rendered in other states. *Gwynn v. Rush*, 143 Ark. 4, 219 S.W. 339 (1920).

Where realty located in another state was acquired by the parties during their marriage and where the law of the other state does not recognize a wife's inchoate right of dower in her husband's separate property, the law of the other state would apply in determining the parties' rights in that property in a divorce proceeding. *Strang v. Strang*, 258 Ark. 139, 523 S.W.2d 887 (1975).

Contribution of Parties.

Where wife was employed during most of the time of her marriage and contributed her earnings to the acquisition of furniture and other personal property, chancellor was justified upon granting divorce to wife in holding that wife had an equal claim on the items so acquired. *Carr v. Carr*, 226 Ark. 355, 289 S.W.2d 899 (1956).

Article 9, § 7 of the Constitution was meant to put a wife on an equal footing with her husband in the acquisition and transfer of property, but it does not purport to clothe the wife with superior property rights in the event of a divorce; accordingly, the trial court did not err when it ordered an equal division of all the marital property despite the wife's conten-

tion that it was inequitable because her earnings had formed the greater part of the purchase price. *Stuart v. Stuart*, 280 Ark. 546, 660 S.W.2d 162 (1983).

When one spouse makes significant contributions of time, effort and skill which are directly attributable to the increase in value of nonmarital property, the presumption arises that such increase belongs to the marital estate. *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987), overruled, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

In a divorce decree, the trial court did not err under subdivision (a)(1)(B) of this section in awarding the wife a 40 percent interest in the value of improvements to a house that was built during the marriage on the husband's lot because she testified that she helped work on the house and that she paid for materials; the parties lived in her nonmarital residence while the house was under construction. *Johnson v. Johnson*, 2011 Ark. App. 276, 378 S.W.3d 889 (2011).

Conveyance to Spouse.

This section does not apply to property which the husband conveyed to his wife on voluntary separation. *McNutt v. McNutt*, 78 Ark. 345, 78 Ark. 346, 95 S.W. 778 (1906); *Harbour v. Harbour*, 103 Ark. 273, 146 S.W. 867 (1912); *Apple v. Apple*, 105 Ark. 669, 152 S.W. 296 (1912).

This section does not apply to property which the husband conveyed to his wife for love and affection. *Dickson v. Dickson*, 102 Ark. 635, 145 S.W. 529 (1912).

Where husband obtained a divorce for cause, it was held that the wife was not entitled to return of the land which she had deeded to husband. *Price v. Price*, 127 Ark. 506, 192 S.W. 893 (1917).

A decree of divorce awarding to the wife real estate conveyed to her by the defendant as a gift in consideration of love and affection, was held erroneous as depriving her of dower on account of gifts theretofore made to which this section has no application. *Glover v. Glover*, 153 Ark. 167, 240 S.W. 716 (1922).

This statute is not applicable to gifts or advancements made by the husband to his wife; where a husband purchases land and takes the deed therefore in the name of his wife, there is a presumption that he intends to make an advancement to her and the law does not imply a promise or

obligation on her part to refund the money or to divide the property purchased, or to hold the same in trust for him. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

A conveyance by the husband in anticipation of the wife's suit for divorce, and to prevent her from recovering alimony, is fraudulent and may be set aside. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

Presumption of a gift of the money to the wife was overcome by the fact that deed to property subsequently acquired was taken in the husband's name. *Angelletti v. Angelletti*, 209 Ark. 991, 193 S.W.2d 330 (1946).

Deed interest in lease by husband to wife in consideration of dismissal of divorce proceeding by wife and as evidence of good faith of husband was not a deed in consideration or by reason of their marriage. *Turner v. Turner*, 219 Ark. 259, 243 S.W.2d 22 (1951).

In suit for divorce by wife the husband was not entitled to recover on cross-complaint for return of real estate transferred to wife during marriage, if transfer was for the purpose of defrauding the creditors of the husband. *McClure v. McClure*, 220 Ark. 312, 247 S.W.2d 466 (1952).

Evidence sufficient to support the trial court's finding that the transfer of money to wife was not a gift, voluntarily made, but rather was the product of a confidence betrayed or influence abused. *Marshall v. Marshall*, 271 Ark. 116, 607 S.W.2d 90 (1980).

Where evidence showed that after the parties separated and the husband filed for divorce the husband conveyed his interest in their home to her it was properly held that upon their subsequent divorce the home was not marital property but was the wife's separate property because the husband had freely and voluntarily executed the conveyance to her. *Smith v. Smith*, 6 Ark. App. 252, 640 S.W.2d 458 (1982).

House held to be wife's separate property where husband signed deed, transferring real property to wife, and filed it for record, where although he continued to reside there, wife paid all real estate and personal property taxes, insurance and the mortgage, and where there was no evidence wife said she would deed the

home back. *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

Trial court erred in declaring that couple's home was marital property where it had been deeded to the wife in 1982; there was no evidence that the wife agreed to do anything as an inducement or consideration for the transfer of property, the deed was immediately recorded, and there was no discussion of the wife deeding the property back to the husband. *Horton v. Horton*, 92 Ark. App. 22, 211 S.W.3d 35 (2005).

Debts.

Where the divided property is mortgaged, each takes subject thereto. *Crosser v. Crosser*, 121 Ark. 64, 180 S.W. 337 (1915).

Where debts were joint debts of marriage, wife required to share equally in income tax indebtedness on corporate fund. *McMurray v. McMurray*, 275 Ark. 303, 629 S.W.2d 285 (1982).

In a divorce action, chancellor was not required to divide the parties' debts, that is, to consider each debt and assign a party to pay; however, he was obligated to consider those debts in deciding the questions of alimony, support for the children, and perhaps the division of the property. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).

A chancellor has the power to adjust marital debts as between the parties although this authority is not expressly given by the Code. *Warren v. Warren*, 33 Ark. App. 63, 800 S.W.2d 730 (1990).

If, during the parties' marriage, the indebtedness held against one spouse's non-marital properties was greatly reduced through payments made with marital funds, this section permits the chancellor to award the other spouse one-half of the reduction in indebtedness, either as an increase in value of non-marital property, or as a transformation of non-marital property into marital property through the investment of marital funds. *Box v. Box*, 312 Ark. 550, 851 S.W.2d 437 (1993).

A chancellor has no authority to determine the validity of an obligation to a third party who is not a party to the divorce. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

Questions about marital debts, and whether they should be "considered" as liabilities under subdivision (a)(1)(A)(vii) of this section in assigning marital prop-

erty, are questions of fact. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

Credit card debts incurred by one party during the period of the parties' legal separation were marital debts that the chancellor had discretion to divide between the parties. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

The trial court did not err when it held each party responsible for half of a stock margin debt where the husband testified that the debt was incurred to finance cost overruns on the construction of the parties' residence, for furnishing the house, and generally to pay for the parties' lifestyle and living expenses, and the wife did not refute this in her own testimony and, indeed, confirmed the high cost of the house and the furnishings. *Hunt v. Hunt*, 341 Ark. 173, 15 S.W.3d 334 (2000).

Although this section did not expressly give the chancellor the power to allocate marital debts as between the parties, the power was implied and to ignore debts would nullify divorce effectiveness and leave an essential item of divorce dispute unresolved. *Ellis v. Ellis*, 75 Ark. App. 173, 57 S.W.3d 220 (2001).

This section does not apply to the division of marital debts, hence, in Arkansas, there is no presumption that an equal division of debts must occur; accordingly, the trial judge's unequal division of the marital debts due to the disparity between the parties' incomes and their relative abilities to pay the debts was affirmed. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

This section does not apply to the division of marital debts and there is no presumption that an equal division of debts must occur; thus, where the parties had only a brief marriage and the wife plainly had preexisting medical bills, her failure to present testimony or medical bills indicating which bills were incurred after the parties married justified the trial court's decision that the husband was not responsible for a portion of those bills. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

Trial court abused its discretion in ordering the parties to each pay one-half of the marital debt in a divorce proceeding as it was not economically feasible for the wife to use the property awarded to her as half of the marital property in order to pay

half of the debt; the husband had the ability to earn substantially more income than she did. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

Trial court did not err in not awarding a husband interest accrued on a credit card after holding that the husband was entitled to a payment from his former wife in the amount of \$1,413 because the husband admitted that he had charged additional items on the credit card, which were included in the payoff, although he did not have any documentation of the amounts that he charged. *Lyons v. McInvale*, 98 Ark. App. 433, 256 S.W.3d 512 (2007).

Trial court erred in finding that a wife owed a husband for expenditures he made to the wife's duplex, which was nonmarital property, because the amount the wife allegedly owed the husband included a sum for a bedroom suite and mortgage payments made to the wife's mortgagee, while husband's daughter and her family were living in the duplex. *Wise v. Wise*, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

Trial court did not err in finding that 85 percent of a wife's student loan was a marital debt because it was used to pay household debts when the parties' income was insufficient to support them, nor in finding that the husband should pay 40 percent of that debt and the wife 60 percent, using the factors set out in subdivision (a)(1)(A) of this section. *Easley v. Easley*, 2010 Ark. App. 73 (2010).

In a divorce and property distribution action, the trial court did not err in refusing to give a husband credit for payments he claimed to have made on marital debts during the divorce proceedings to preserve the marital estate as the trial court's allocation of the marital debt was supported by the husband's admission that the only marital debt he paid was the mortgage on property that the parties owned in Alabama. *Friend v. Friend*, 2010 Ark. App. 525, 376 S.W.3d 519 (2010).

Because the circuit court was required to reexamine the division of property pursuant to the mandate, it was entitled to also consider the division of debts, including the deficiency of the marital home. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

Trial court was not clearly erroneous in finding that credit-card debt was marital to be equally divided between the parties because its findings were primarily cred-

ibility findings, which the court of appeals did not disturb; the trial court credited the wife's testimony that the husband knew about the credit cards, that he occasionally made payments on them, and that she only used them to pay for marital items. *Fell v. Fell*, 2015 Ark. App. 590, 473 S.W.3d 578 (2015).

One store debt was incurred solely to pay for repairs and improvements to the husband's premarital property that he retained after the divorce, and thus he would be the only beneficiary, while the wife only lived briefly in the home and did not take any of the items purchased at the store when she left, and there was no evidence or argument that the windows she purchased were a gift; the division of the store debt, requiring the husband to pay the debt and reimburse the wife for the amount she spent, was not clearly erroneous. *Fields v. Fields*, 2015 Ark. App. 143, 457 S.W.3d 301 (2015).

Circuit court did not clearly err by finding that the husband was solely responsible for a lease arrearage because the wife testified that, pursuant to an agreed temporary order, the wife paid a portion of the lease directly to the husband, who was responsible for paying the leasing agent, but the husband did not make the lease payments and could not explain where the money went. In addition, the appellate court could not say that the circuit court erred in allotting the husband's personal tax debt to the husband, given the parties' conflicting testimony and the circuit court's superior position to determine the credibility of witnesses. *Rawls v. Yarberr*, 2018 Ark. App. 536, 564 S.W.3d 537 (2018).

Husband's student-loan debt was properly divided where past student-loan repayment, the allocation of retirement accounts, and current student-loan debt were considered in determining how to apportion the debt. *Friedly v. Friedly*, 2020 Ark. App. 167, 597 S.W.3d 135 (2020).

Designation by Decree.

This section will not affect a husband's ownership of property, upon a divorce being granted to his wife, until the property is designated by the decree. *Hix v. Sun Ins. Co.*, 94 Ark. 485, 127 S.W. 737 (1910).

A decree of divorce which provides that "all property not disposed of at the com-

mencement of this action which either party hereto obtained from or through the other during the marriage" shall be restored, refers only to the separate property of the parties. *Dawson v. Mays*, 159 Ark. 331, 252 S.W. 33 (1923).

Division by Summary Judgment.

Without evidence of whether property and debts were marital or nonmarital and without a hearing on the statutory factors to be considered for an inequitable division of marital property, the division of property and debt by an order of summary judgment was both an abuse of discretion and an error of law. *White v. Shepard*, 2015 Ark. App. 223, 459 S.W.3d 333 (2015).

Division Inadequate.

While a husband was assessed the bulk of the parties' marital debt, pursuant to subdivision (a)(1) of this section, reversal was necessary as his continued receipt of his entire military retirement benefits would result in a substantial windfall to him. *Bellamy v. Bellamy*, 2011 Ark. App. 433 (2011).

Dower and Curtesy.

Divorce bars dower. *Wood v. Wood*, 59 Ark. 441, 27 S.W. 641 (1894).

The purpose of this statute was to put an end to all controversies as to dower rights. *Beene v. Beene*, 64 Ark. 518, 43 S.W. 968 (1898); *Kendall v. Crenshaw*, 116 Ark. 427, 173 S.W. 393 (1915).

Generally a divorce by a court having jurisdiction terminates all obligations of either party to the other, cutting off the wife's right of dower and the husband's tenancy by the curtesy. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Wife who obtained a divorce could not claim dower for the first time on appeal. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

In considering who is the injured party under § 9-12-301(5) (subsequently amended in 1991), the court is not required to make a full award of dower but may reduce the dower in keeping with the equities of the case. *Narisi v. Narisi*, 233 Ark. 525, 345 S.W.2d 620 (1961).

The statutory property division is considered as dower. *Alston v. Bitely*, 252 Ark. 79, 477 S.W.2d 446 (1972).

Election of Remedy.

Where wife brought an action for annulment of the marriage and for establish-

ment of a constructive trust and reformation of a deed in her favor and where the proof was insufficient to support the equitable lien theory, she could not then attempt to claim any of the benefits available to divorced persons under this section either directly or indirectly. *McIntire v. McIntire*, 270 Ark. 381, 605 S.W.2d 474 (1980).

Equal Division.

Husband failed in his burden to present sufficient evidence to divide the marital accounts in any other manner than one-half to each party; the two factors that supported his request did not convince the trial court that equity required an unequal division or that it would be justifiable, and he failed to demonstrate that the trial court clearly erred. *Barron v. Barron*, 2015 Ark. App. 215 (2015).

Circuit court did not err on remand in ordering the same equal division it had ordered in the parties' divorce decree for every item of marital property because the order was not in derogation of the appellate court's earlier decision and was in keeping with this section. The circuit court did not exceed the appellate mandate on remand by determining the issue initially presented to it — the division of marital property — which remained unresolved, and its finding that an equal division would not be inequitable did not require consideration of the statutory factors for an inequitable distribution. *Bradford v. Isom*, 2015 Ark. App. 278 (2015).

Even if there was an unequal distribution, it was clear that the circuit court at least considered the relevant statutory factors for distribution of marital property, specifically discussing factors such as the length of the marriage, sources of income, contribution to the marriage, and the circuit judge did not clearly err. *Fry v. Fry*, 2015 Ark. App. 339, 463 S.W.3d 738 (2015).

This section did not compel mathematical precision in the distribution of property, but nevertheless, a study of the property values distributed in the instant case, which had to be accepted as correct, showed near mathematical precision. Accepting the figures as true, the net value received by appellant was \$434,839.26, and by appellee, \$436,312.73, the difference in awards was almost nominal, and thus there was an equal distribution of

the parties' property. *Fry v. Fry*, 2015 Ark. App. 339, 463 S.W.3d 738 (2015).

Circuit court's division of marital property was affirmed as there was no requirement that marital debt be equally divided, the marital assets were equally divided, and the husband had not pointed to any evidence of fraud that would have warranted a reduction in the wife's share of the marital assets to compensate for the value of the Goldendoodle dog or the money that she gave to one of her par-amours. *Goodson v. Bennett*, 2018 Ark. App. 444, 562 S.W.3d 847 (2018).

Trial court's division of marital property was not clearly erroneous where it divided the property and debt in an effort to make as equal an overall division of the marital estate as possible, and the net value of the parties' property after the division left the husband with approximately 48% of the net value. *Banks v. Banks*, 2019 Ark. App. 166, 574 S.W.3d 187 (2019).

Even though the marriage was very short and each party requested an unequal division, the circuit court's decision to equally divide the marital assets was not clearly erroneous because it clearly considered the factors listed in this section and determined that an equal distribution of marital assets would be equitable; and the circuit court awarded the wife only a fraction of the rehabilitative alimony that she requested. *Chekuri v. Nekkalapudi*, 2020 Ark. 74, 593 S.W.3d 467 (2020).

Division of marital property was affirmed as the finding that there was insufficient evidence to prove that assets were missing and the rejection of the husband's request for an unequal distribution were credibility issues for the court. *Norwood v. Norwood*, 2020 Ark. App. 345, 604 S.W.3d 252 (2020).

Findings Required.

Divorce case was remanded in part because the trial court did not specify whether assets, including the investment interests and household furnishings, were marital property or nonmarital property, and it did not state its reasons for every unequal division of marital property or any distribution of nonmarital property to the non-owning spouse. *Wilson v. Wilson*, 2016 Ark. App. 256, 492 S.W.3d 534 (2016).

Circuit court erred in ordering the husband to maintain a survivor benefit plan

where it did so without providing a justification for why the husband had to shoulder a share of the costs when he received none of the benefits. *Pelts v. Pelts*, 2017 Ark. 98, 514 S.W.3d 455 (2017).

Because a divorce decree did not set forth a circuit court's reasoning for the unequal division of marital property, the case had to be remanded for the circuit court to enter an order that satisfied the statutory requirements. *Chambers v. Chambers*, 2017 Ark. App. 429, 527 S.W.3d 1 (2017).

Trial court erred in its property distribution because the court did not address the distribution of numerous items of personal property requested in a husband's pretrial contempt motion and testified to at trial, some of which were of significant value, making it impossible for an appellate court to determine if marital property was equally distributed. *Garcia v. Garcia*, 2018 Ark. App. 146, 544 S.W.3d 96 (2018).

In dividing marital property, the trial court clearly erred in failing to place a value on an LLC where the court awarded the LLC to the husband to offset the award to the wife of the parties' home and the proceeds from the sale of another marital asset. *Steeland v. Steeland*, 2018 Ark. App. 551, 562 S.W.3d 269 (2018).

Fraud.

Though this section does not authorize a division of personal property fraudulently removed from the state by the husband, a court of equity has power to declare the lien under its general power to grant relief from fraud. *Austin v. Austin*, 143 Ark. 222, 220 S.W. 46 (1920).

Where a husband, in contemplation of his wife's suit for divorce, fraudulently conveyed his land and departed from the state, taking his personal property with him, the value of the personal property should be considered in determining her share of his property and the value of the real property declared to be a lien on the land. *Wilson v. Wilson*, 163 Ark. 294, 259 S.W. 742 (1924).

Evidence did not clearly show a fraudulent plan or scheme on part of the wife to obtain husband's property and was not sufficient to support a finding of fraud authorizing cancellation of deed to property voluntarily conveyed to wife. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Where testimony supported finding that chattel mortgage was executed in fraud of and to defeat the wife's marital rights, the wife was entitled to her interest in the personalty free from the mortgage. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

In a federal diversity action by a judgment creditor to recover fraudulently transferred assets, the district court was under no obligation to consider that a state court approved a property settlement agreement as equally dividing the divorcing parties' assets. *FDIC v. Bell*, 106 F.3d 258 (8th Cir. 1997), cert. denied, 523 U.S. 1022, 118 S. Ct. 1304, 140 L. Ed. 2d 470 (1998).

Given the paucity of evidence of any intent by appellee to defraud appellant, and the trial court's superior position to assess credibility, the trial court did not clearly err in making an equal division of the marital property. *Wainwright v. Merriam*, 2014 Ark. App. 156 (2014).

In a divorce case, where a husband argued for an unequal division of marital property because of the wife's alleged fraudulent dissipation of assets, there was no error because a \$67,000 payment that a wife made to her mother was legitimate compensation for her participation in the wife's business, there was evidence that the business was not successful, and the husband waived his argument relating to the statutory factors. The fact that the wife's mother then lent the daughter \$50,000 to purchase a home and new business one month before the divorce was granted did not alter this result. *Davis v. Davis*, 2016 Ark. App. 210, 489 S.W.3d 195 (2016).

Circuit court's award to wife of one-half of the marital funds the husband spent during the parties' separation was not clearly erroneous under the facts of the case because the husband's cash withdrawals increased after the separation and the cash balance in his accounts decreased by the time of the divorce hearing, and there was evidence from which the circuit court could conclude that the husband spent the funds with the intent to defraud the wife because he had no documentation to support the majority of his expenses. *Chekuri v. Nekkallapudi*, 2020 Ark. 74, 593 S.W.3d 467 (2020).

Jurisdiction.

The filing of a complaint describing real property gives the court jurisdiction over it for the purpose of making an award in accordance with the statute; no attachment or other method of sequestration is necessary in order for the court to acquire jurisdiction. *Allen v. Allen*, 126 Ark. 164, 189 S.W. 841 (1916).

Description of property in pleadings is unnecessary to confer jurisdiction. *Hegwood v. Hegwood*, 133 Ark. 160, 202 S.W. 35 (1919).

Where a wife's complaint for divorce asked a division of property, the court acquired jurisdiction in rem of the husband's property, though there was no personal service on the defendant nor seizure of the property under attachment or otherwise. *Austin v. Austin*, 143 Ark. 222, 220 S.W. 46 (1920).

A chancellor loses the authority to distribute property not mentioned in the original decree after the decree has become final. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

This section does not authorize a division of marital property after the divorce decree has been entered, in the absence of fraud or other grounds for relief from the original judgment. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

To the extent a spouse acquires an enforceable right during the marriage to recover fees under a contingency fee contract, the spouse acquired marital property; any difficulty in valuing contingency fee contracts may be solved by reserving jurisdiction in the trial court in order to await the outcome of the underlying actions. *McDermott v. McDermott*, 336 Ark. 557, 986 S.W.2d 843 (1999).

Legislative Intent.

Nothing in this section suggests the legislature intended this provision to have any effect except with respect to divorce. *Ellis v. Ellis*, 315 Ark. 475, 868 S.W.2d 83 (1994).

Specific enumeration of the factors in subdivision (a)(1) of this section does not preclude a trial court from considering other relevant factors where exclusion of other factors would lead to absurd results or deny the intent of the legislature to allow the court to make an equitable division of property. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

Loan or Gift Between Spouses.

Wife failed to prove by clear and convincing evidence that she rebutted the presumption that her payments to the husband were gifts; therefore, the trial court erred in finding that the wife had loaned the husband money for his law firm where the only evidence of a loan was the wife's testimony and there was no evidence she had demanded repayment during the marriage. *Sanders v. Passmore*, 2016 Ark. App. 370, 499 S.W.3d 237 (2016).

Marital Property.

Increase in value of the husband's limited partnership's stock brokerage accounts was not his separate property where the husband's efforts, which resulted in the increase in the value of the accounts, caused the increase to be classified as marital property. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Circuit court complied with this section when it stated the factors it considered in concluding that the division of the parties' personal property was equitable where (1) there was scant evidence in the record as to the value of the personal property; and (2) the circuit court was not required in every case to mechanically divide the marital property in kind. *Gilliam v. Gilliam*, 2010 Ark. App. 137, 374 S.W.3d 108 (2010).

Trial court erred in finding that a hunting club membership was nonmarital property as: (1) the husband's self-serving testimony did not rebut the presumption under this section that the property was marital property; (2) the property was purchased two years after the parties were married, and marital funds were used to pay the annual fees; and (3) the origination of the funds used for the purchase was not evidenced by the fact that the partnership document named the husband as a limited partner, or by a check from the husband's mother dated well after the purchase. *Carroll v. Carroll*, 2011 Ark. App. 356, 384 S.W.3d 50 (2011).

Property that was given to the husband as a gift prior to marriage was not marital property and it would have qualified as an exception in any event; the trial court clearly believed the husband's testimony, the wife's name was not on the deed, and

the trial court did not clearly err in awarding the property to the husband. *Baker v. Baker*, 2013 Ark. App. 543, 429 S.W.3d 389 (2013).

Reversal of a circuit court's finding that the funds in a brokerage account held as tenants by the entirety were the separate property of the husband was appropriate because the court erred in failing to recognize the rights of the husband and wife as tenants by the entirety in the account held as joint tenants with right of survivorship. The circuit court, on remand, was to consider whether an equal distribution of the funds was inequitable. *Bradford v. Bradford*, 2013 Ark. App. 615 (2013).

In a divorce action, the court did not err under subdivision (b)(1) of this section in finding that a promissory note for the sale of the husband's Nevada law firm was marital property because the record showed that he was only able to devote the majority of his time and energy to the success of the law practice because the wife was taking care of the children and the home. *Blalock v. Blalock*, 2013 Ark. App. 659 (2013).

In a property division case in which a husband argued that the circuit court erred by not awarding him an interest in a home that was nonmarital property, he failed to show marital contributions and an increase in value. *Jones v. Jones*, 2014 Ark. 96, 432 S.W.3d 36 (2014).

Trial court erred when it refused to consider appellee's testimony that no money had been exchanged and the property was a gift because to do so would have contradicted the recitation in the deed that the property had been sold for a few dollars; the case was remanded for the trial court to consider the matter in light of the holding in case law that recitation in a deed of consideration did not preclude a finding of a gift. *Wainwright v. Merryman*, 2014 Ark. App. 156 (2014).

Trial court did not err in its division of property, given that the parties' verbal agreement did not constitute a valid agreement to exclude the properties at issue from marital property, and the facts surrounding the placement of both names on the deeds were more convincing that joint ownership was intended rather than providing clear and convincing evidence that it was not; titling the properties jointly was sufficient in itself to raise the presumption that a gift was thereby made

to the other spouse, and the wife's own testimony that it was done in anticipation of death supported that presumption. *Robinson v. Lindsey*, 2015 Ark. App. 148 (2015).

When a husband and his father jointly opened certificates of deposit (CDs) during the husband's marriage, the circuit court did not clearly err in finding that the CDs were marital property because nothing conclusively established that the CDs were property acquired by gift or by reason of the death of another under subsection (b) of this section. *McGahhey v. McGahhey*, 2018 Ark. App. 597, 567 S.W.3d 522 (2018).

—In General.

Marital property is marital property whether it is voluntarily or involuntarily acquired. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

This section requires that marital property be divided at the time the divorce is granted. *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

Where transactions result in great difficulty in tracing the manner in which nonmarital and marital property have been commingled, the property acquired in the final transaction may be declared marital property. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Contribution of each party in the acquisition of marital property is a factor to be considered by the trial judge in making a division of marital property, however, it should not be the sole factor considered; thus, the court stated that, to the extent that *Stout v. Stout*, 4 Ark. App. 266, 630 S.W.2d 53 (1982), was in conflict with this opinion, it was overruled. *Baxley v. Baxley*, 92 Ark. App. 247, 212 S.W.3d 8 (2005).

Nonmarital Property.

The fact that this section provides that the increase in value of property acquired by one party prior to the marriage is nonmarital property does not mean that the chancellor must award the entire amount of the increase to the party that acquired the property prior to the marriage; instead, subdivision (a)(2) of this section expressly provides that the court may make some other division that it deems equitable. If the trial court does determine that it is equitable to divide nonmarital property between the parties,

however, this section requires that the court take into consideration those factors listed in subdivision (a)(1)(A) of this section and that the court state in writing its reasons. *Yockey v. Yockey*, 25 Ark. App. 321, 758 S.W.2d 421 (1988).

Husband claimed the trial court clearly erred in awarding the wife his nonmarital property because they lived together as a married couple for only a few months, but the record showed they had a much longer and more involved history, plus subdivision (a)(2) of this section authorized the trial court to distribute the husband's nonmarital property to the wife based on the equities of the situation, and the trial court did not clearly err in awarding the wife the husband's nonmarital real property, where she had lived for 20 years. *Marks v. Marks*, 2014 Ark. App. 174, 432 S.W.3d 698 (2014).

Husband cited no authority for his argument that subdivision (a)(2) of this section did not apply when there was no marital property to be divided, and the statute instead authorized the trial court to do what it did, plus in distributing the husband's nonmarital property, the trial court complied with the statute by taking into consideration the factors enumerated in subdivision (a)(1) and stating in writing the basis and reasons for not returning the property to him. *Marks v. Marks*, 2014 Ark. App. 174, 432 S.W.3d 698 (2014).

Although the trial court incorrectly declared that a home was marital property, it did not equally divide the \$35,000 equity in the home and it treated the home as nonmarital property. Under subdivision (a)(2) of this section, and consistent with the correct conclusion that the home was nonmarital property, the trial court awarded husband his \$11,000 down payment on the home, made prior to the marriage, and then equally divided the remaining \$24,000 between the husband and wife. *Fell v. Fell*, 2015 Ark. App. 590, 473 S.W.3d 578 (2015).

Trial court did not clearly err in awarding the wife a \$12,000 interest in the equity of the nonmarital home because marital funds were used to pay the mortgage and make improvements on the husband's house; thus, the wife was entitled to some benefit. *Fell v. Fell*, 2015 Ark. App. 590, 473 S.W.3d 578 (2015).

"Active appreciation" rule conflicts with the plain language of subdivision (b)(5) of

this section, which provides that the “increase in value of property acquired prior to marriage” is nonmarital; therefore, *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987), *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006), and *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), are overruled to the extent they redefine marital property through the “active appreciation” rule. *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Because the husband’s interest in his company was acquired before his marriage to the wife, it was a nonmarital asset, and the trial court erred in considering it marital property and awarding the wife half of the growth of the business. The trial court did not make findings under subdivision (a)(2) of this section to justify a distribution of nonmarital property. *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Trial court erred in finding that a certain investment was a marital asset because it was acquired prior to the marriage. Although the wife testified that it was the intent of the parties to make a joint investment, the husband purchased the interest by himself prior to the marriage; the stock-purchase agreement reflected that the husband purchased the interest in his name, and the evidence showed that the initial capital contribution came from his checking account. *Wilson v. Wilson*, 2016 Ark. App. 256, 492 S.W.3d 534 (2016).

Husband had acquired the home before the marriage, and there was no evidence that it was purchased with the intent to make it the couple’s marital home; the circuit court erred in treating the house as marital property, no reason was provided why the house should not be returned to the husband, and remand was required. *Thurmon v. Thurmon*, 2016 Ark. App. 497, 504 S.W.3d 675 (2016).

In dividing marital property, the trial court clearly erred in awarding the marital home to the wife where the husband had acquired the home prior to the marriage, and the property was not transformed into marital property by its use as collateral for loans. On remand, the trial court was to make findings concerning the benefit that the wife may be entitled to if marital funds were expended to pay off debt on the property or to pay for improvements on the property that increased its

value. *Steeland v. Steeland*, 2018 Ark. App. 551, 562 S.W.3d 269 (2018).

Circuit court’s award to wife of \$100,000 from husband’s separate nonmarital medical practice was affirmed; the wife had worked for the medical practice before the parties were married and during the marriage as the office manager and marital funds were used to pay debts of the medical practice. *Perser v. Perser*, 2019 Ark. App. 467, 588 S.W.3d 395 (2019).

Circuit court properly awarded the wife \$52,000 from the home, which the parties agreed was the husband’s separate property, where marital funds and funds from the sale of the wife’s premarital home were used to pay the debt on the husband’s separate property; in this case, the circuit court ordered an equitable distribution to the wife of the husband’s nonmarital business and home, as well as alimony, and the court specifically stated in making the award that it had considered that the husband retained the home. *Perser v. Perser*, 2019 Ark. App. 467, 588 S.W.3d 395 (2019).

Pleadings.

Chancellor erred in dividing the marital property under this section where only separate maintenance was sought in amended pleading. *Spencer v. Spencer*, 275 Ark. 112, 627 S.W.2d 550 (1982).

Chancellor is not required to divide any asset equally between the parties if reasons for not doing so are stated. *Bunt v. Bunt*, 294 Ark. 507, 744 S.W.2d 718 (1988).

Property.

—Accounts.

There was no error in the division of accounts, given that one account bore both parties’ names and the wife had also made deposits to and withdrawals from the account, and the accounts the wife claimed as nonmarital property were held in her name only; the trial court’s decision complied with the statutory requirement that all marital property be equally divided. *Walls v. Walls*, 2014 Ark. App. 729, 452 S.W.3d 119 (2014).

Trial court did not clearly err in deeming certain accounts to be marital property, as the husband did not rebut the presumption that the accounts, which were held in the parties’ joint names during the marriage, were marital; the source

of the funds was of minimal value because the monies were converted into marital funds by virtue of their placement into joint accounts and by virtue of their joint access and usage. *Barron v. Barron*, 2015 Ark. App. 215 (2015).

Imputing income of \$2,500 to the wife's bank account on the entry date of the divorce decree was clear error where the wife had simply taken the money from the account prior to the divorce decree, as was permitted, the money she spent from the account was used to pay bills, and thus, depositing the money into the account following the entry of the divorce decree was not evasive and was irrelevant. *Langston v. Brown*, 2016 Ark. App. 535, 506 S.W.3d 261 (2016).

Circuit court did not err by failing to equally divide a bank account because the court's order acknowledged that the sole purpose of the account on the advice of a financial advisor was to pay income tax for the wife, whose employer did not make tax deductions, and the decision effected an equitable distribution of marital property. *Rawls v. Yarberry*, 2018 Ark. App. 536, 564 S.W.3d 537 (2018).

Circuit court did not clearly err in equally dividing appellant husband's bank account between the husband and wife; the parties' testimony on the account's valuation was unclear, no financial records were introduced, and while husband testified that some funds were pre-marital, the circuit court was not required to credit that testimony. Further, there was also testimony that the husband had given away large sums of money to his family without the wife's knowledge or consent. *Janjam v. Rajeshwari*, 2020 Ark. App. 448 (2020).

—Accounts Receivable.

Accounts receivable are marital property. *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Husband's investment in a business operated by his sons was marital property because the money came from a joint account and the wife could be awarded portion of accounts receivable from the sons' failed business venture as it was not equitable to the wife to have the classification of this asset turn on the enmity between the parties, and the fact that a receivable may not be collectable reduced its net value but did not make it non-

marital property. *Farr v. Farr*, 89 Ark. App. 196, 201 S.W.3d 417 (2005).

—Bonus.

Where husband's bonus accrued and, therefore, was acquired during his marriage to wife, chancellor abused his discretion in finding that none of bonus was marital property. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Bonus which accrued during the parties' marriage is marital property subject to division. *Tortorich v. Tortorich*, 50 Ark. App. 114, 902 S.W.2d 247 (1995).

—Business.

There was evidence that the husband's sweat equity was his consideration for his interest in a company, and the trial court did not clearly err in determining that he gave consideration for his interest in the company, and thus the property was not a gift excepted from the parties' marital assets. *Massey v. Massey*, 2014 Ark. App. 111, 432 S.W.3d 134 (2014).

By not requiring the husband to buy the wife's interest in the marital business at the value assigned by the circuit court and allowing a reverse auction between the parties, the circuit court awarded an unequal distribution, yet did not state its basis for doing so; if the circuit court intended this unequal distribution, its basis for the award had to be stated. *Ballegeer v. Ballegeer*, 2019 Ark. App. 269, 577 S.W.3d 66 (2019).

Funds deposited into the corporate account during the pendency of the divorce action were not funds belonging to the marital business, and many funds were payments for services rendered, equipment, and materials that were filtered through the business; if the corporate accounts had been divided, the marital business would have been insolvent, and thus the circuit court's decision to keep the corporate account intact was not clearly erroneous. *Ballegeer v. Ballegeer*, 2019 Ark. App. 269, 577 S.W.3d 66 (2019).

Circuit court did not clearly err when it found that a portion of a partnership was marital property, when the husband owned the business before the marriage with his brother and father, and subsequently, during the marriage, the husband and his brother signed a promissory note for \$275,000 to buy out their father's interest, and the husband failed to put on

proof in the divorce action concerning the value of the interest. *Perry v. Perry*, 2020 Ark. App. 63, 594 S.W.3d 126 (2020).

—Capital Accounts.

Where there was no evidence that the former husband had a vested interest in the capital account with his employer that was fully distributive upon the date of the parties' divorce, the former wife was not entitled to any portion of that account. *Hackett v. Hackett*, 278 Ark. 82, 643 S.W.2d 560 (1982).

—Coins.

Testimony regarding a gold coin was conflicting, and the trial court believed the husband, and there was no clear error in finding that it was marital property. *Baker v. Baker*, 2013 Ark. App. 543, 429 S.W.3d 389 (2013).

—Commissions.

Insurance policy renewal commissions were income generated by corporation which was nonmarital property, and thus, the corporation's insurance policy renewal commissions were themselves, pursuant to subdivision (b)(7) of this section, exempt from the definition of marital property. *Dalrymple v. Dalrymple*, 74 Ark. App. 372, 47 S.W.3d 920 (2001).

—Disability Income.

Disability payments received by the husband did not lose their status as separate property when they were deposited in a joint checking account where the husband testified that the wife only wrote checks on the joint checking account after first discussing it with him, that the parties understood the separate nature of their checking accounts, and that he had not intended to give the wife an interest in the funds in the joint checking account. *McKay v. McKay*, 66 Ark. App. 268, 989 S.W.2d 560 (1999).

Where monthly disability income benefits had accrued to former husband, the benefits were a marital asset subject to division, and trial court erred in finding they had no cash value and awarding the asset solely to former husband. *Frigon v. Frigon*, 81 Ark. App. 314, 101 S.W.3d 879 (2003).

—Employment Compensation.

A cash advance paid to husband by husband's employer, acquired after the parties separated, was compensation for

future services and contingent upon husband's future performance; thus, it was not earned during the marriage and was not marital property. *O'Neal v. O'Neal*, 55 Ark. App. 57, 929 S.W.2d 725 (1996).

When husband was awarded Federal Employee Liability Act proceeds as a result of permanent disabilities he suffered as a railroad engineer, the chancery court did not err in determining that these proceeds were non-marital property, and that husband was entitled to all the proceeds. *Collins v. Collins*, 347 Ark. 240, 61 S.W.3d 818 (2001).

Money accumulated in the husband's Deferred Retirement Option Plan during the parties' marriage constituted marital property of which the wife was entitled to a 50 percent interest. *Dial v. Dial*, 74 Ark. App. 30, 44 S.W.3d 768 (2001).

—Enhanced Business Career.

A husband's enhanced business career did not qualify as marital property subject to distribution. *Meinholz v. Meinholz*, 283 Ark. 509, 678 S.W.2d 348 (1984).

Medical degree, license or increased earnings capacity did not qualify as marital property. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

—Estates by Entirety.

Where wife's property prior to the marriage was conveyed to husband and wife after marriage as tenants by the entirety but not in consideration of the act of marriage, the wife was not entitled to be restored as sole owner. *Phillips v. Phillips*, 236 Ark. 225, 365 S.W.2d 261 (1963).

Where promissory notes arising out of the sale of a farm were payable to both parties and thus were entireties property, it was error for the chancery court to award the husband a greater share of the notes than the wife as a means of equalizing differences in value of real property awarded the parties. *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975).

Where the chancellor set aside the conveyance by husband which created an estate by the entirety in certain property, the property reverted to ownership by husband individually and the trial court could properly determine that the property was not "marital property" and that the wife should not share in it. *Chrestman v. Chrestman*, 4 Ark. App. 281, 630 S.W.2d 60 (1982).

This section is not applicable to property owned as tenants by the entirety. *Bramlett v. Bramlett*, 5 Ark. App. 217, 636 S.W.2d 294 (1982) (decided prior to 1997 amendment, adding § 9-12-317(c)).

This section does not require that a home owned as an estate by the entirety be sold at the time of the divorce. *Bratcher v. Bratcher*, 5 Ark. App. 250, 635 S.W.2d 278 (1982).

The division of property held as tenants by the entirety is governed by § 9-12-317 rather than this section; § 9-12-317 is the only statutory authority for the division of tenancies by the entirety, and it provides for an equal division of the property without regard to gender or fault. Therefore chancellor erred in dividing property pursuant to this section. *Lyle v. Lyle*, 15 Ark. App. 202, 691 S.W.2d 188 (1985) (decision under prior law).

When property, personal or real, is placed in the names of a husband and wife, the presumption arises that they own the property as tenants by the entirety, and thus clear and convincing evidence is required to overcome the presumption that a spouse depositing money in joint account did not intend a gift or one-half interest to the other spouse. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Where parties' residence is held as a tenancy by the entirety, that estate is automatically dissolved when the final decree is rendered, unless the chancellor specifically provides otherwise, pursuant to § 9-12-317. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

Bank account held not to be owned as tenants by the entirety. *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

—Exchange for Property.

In considering subdivision (b)(2) of this section, the "exchange" provision, only that portion of the property acquired during marriage in exchange for the nonmarital property should be set aside as nonmarital property. An exchange of a nonmarital interest for other property after marriage will yield only a nonmarital interest proportionate in value in the newly acquired property. *Jackson v. Jackson*, 298 Ark. 60, 765 S.W.2d 561 (1989).

—Farm Equipment.

Farm equipment was separate property of the husband where he either owned it

prior to the marriage or acquired it in exchange for other equipment owned prior to the marriage. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

—Furniture.

Where, in a divorce suit, it was shown that the wife with her own means paid half of the price of furniture, a decree awarding the furniture to the husband was erroneous, the wife being entitled to an equal interest therein. *McIlroy v. McIlroy*, 191 Ark. 45, 83 S.W.2d 550 (1935).

Trial court did not clearly err in concluding that the husband gifted the furniture and firearm to the wife; she presented evidence that the husband voluntarily transferred the items to her and ceased to exercise control over them, the trial court found her testimony credible, and the court deferred to that credibility finding. *Marks v. Marks*, 2014 Ark. App. 174, 432 S.W.3d 698 (2014).

—Gifts.

Where a husband advances money to improve his wife's separate property there is a rebuttable presumption that a gift was intended. *Carrick v. Carrick*, 13 Ark. App. 42, 679 S.W.2d 800 (1984).

A gift acquired by either spouse subsequent to the marriage is excluded from the definition of marital property which is subject to division upon divorce. *Lyons v. Lyons*, 13 Ark. App. 63, 679 S.W.2d 811 (1984).

Evidence insufficient to find that property acquired by husband was anything other than a gift. *Layman v. Layman*, 292 Ark. 539, 731 S.W.2d 771 (1987), overruled, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

This section does not authorize a chancellor to divide gift property received by one spouse during marriage. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992).

Where husband received gift property during marriage, which he volunteered as security for a loan consolidation, it was appropriate for the chancellor to apply the gift property to satisfy the loan consolidation debt, but not to pay any other marital debts. *Hale v. Hale*, 307 Ark. 546, 822 S.W.2d 836 (1992).

Where it was clear from the facts and circumstances that husband had made some sort of gift to wife of a ring, valued at \$1,105, before the marriage, he divested

himself of any interest in the ring; thus, the trial court erred in awarding the ring to the husband. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

Ex-husband's real property was properly considered nonmarital property where although the trial court erred in relying on the fact that the property was never titled in the wife's name, the testimony supported the finding that the property was a gift from his parents, and thus, was excepted under subdivision (b)(1) of this section. *Dozier v. Dozier*, 2014 Ark. App. 78, 432 S.W.3d 82 (2014).

—Goodwill.

For goodwill to be marital property, it must be a business asset with value independent of the presence or reputation of a particular individual — an asset which may be sold, transferred, conveyed, or pledged. Whether goodwill is marital property is a fact question, and to establish goodwill as marital property and divisible as such, a party must produce evidence establishing salability or marketability of that goodwill as a business asset of a professional practice. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Husband's professional association had no goodwill value independent of husband's presence and reputation. A solo professional practice may have business goodwill independent of the personal goodwill of the practitioner. Wife had the burden of proving that husband's professional association had business goodwill independent of husband's personal goodwill if it was to be considered a marital asset. *Tortorich v. Tortorich*, 50 Ark. App. 114, 902 S.W.2d 247 (1995).

—Homestead.

The court in granting a divorce may treat the homestead as any other property. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

In the absence of statutory provisions to the contrary, the wife has no homestead rights in the husband's property after a divorce unless the right thereto is reserved to her by the decree and it makes no difference whether the decree was obtained by the husband or by the wife. *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944).

Courts granting decrees of divorce may award the possession of the homestead to

either of the parties for such time and upon such terms and conditions as appear to be equitable and just. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944); *Schaefer v. Schaefer*, 235 Ark. 870, 362 S.W.2d 444 (1962).

Decree allowing homestead to husband was proper. *Orr v. Orr*, 206 Ark. 844, 177 S.W.2d 915 (1944).

A divorce decree giving a wife homestead rights to lands and personal property did not violate section. *Whaley v. Whaley*, 224 Ark. 632, 275 S.W.2d 634 (1955); *Fitzgerald v. Fitzgerald*, 227 Ark. 1063, 303 S.W.2d 577 (1957).

Portion of divorce decree refusing to award alimony and ordering sale of homestead was against the preponderance of the evidence, and wife would be permitted to maintain residence until children were older with husband paying alimony which would be used to make partial mortgage payments on home. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

—Identification.

The trial court had authority to identify and determine what was marital property and, therefore, properly required that the landlords of a store operated by the husband be made parties to the divorce action and that they be enjoined from selling the inventory of the store in order to recover rent due from the husband. *Arnold v. Spears*, 343 Ark. 517, 36 S.W.3d 346 (2001).

—Improvements.

A spouse is entitled to improvements made during the marriage on nonmarital property if the spouse can prove he or she helped make them. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

The improvements made to the wife's house and yard, whether paid for by the joint tax refund checks or by the wife's income earned during the marriage, were marital property. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

It would be inequitable to give the husband an interest in the improvements to the wife's separate property because, while the wife continued to make the mortgage payments thereon, the husband did not contribute to these payments although he was saving approximately \$250 in rent each month. *Camp v. Camp*, 18 Ark. App. 87, 710 S.W.2d 842 (1986).

A co-owner who makes improvements to the property is generally awarded the resulting increase in the value of the property, and not the actual costs of the improvements. *Flucht v. Villareal*, 28 Ark. App. 1, 770 S.W.2d 187 (1989).

Where parties were only married three years before separating, the husband was entitled to some benefit by reason of marital funds having been used to improve the wife's property that she brought into the marriage. *Weatherly v. Weatherly*, 87 Ark. App. 291, 190 S.W.3d 294 (2004).

Trial court did not err in finding that a 60-acre tract that had been conveyed to a husband by his mother, while originally nonmarital property, had lost its status as nonmarital property because of the substantial improvements made to the property with marital funds and the wife's nonmarital funds and in equitably dividing the tract. *Coatney v. Coatney*, 2010 Ark. App. 262, 377 S.W.3d 381 (2010).

—Income.

Any accumulation of income during the marriage from the husband's nonmarital property constituted marital property; thus, the rental income on the husband's farmland the year after his separation from his wife was not an increase in value of his nonmarital property under subdivision (b)(5) of this section. *Speer v. Speer*, 18 Ark. App. 186, 712 S.W.2d 659 (1986) (decision prior to 1989 amendment).

Income accumulated from nonmarital certificate of deposit accounts held to be marital property. *Wagoner v. Wagoner*, 294 Ark. 82, 740 S.W.2d 915 (1987); *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988) (decisions prior to 1989 amendment).

Wife's salary check and stipend, earned subsequent to the marriage, are clearly marital property, and should be divided pursuant to this section as the chancellor believes the equities require. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988).

"Active appreciation" rule conflicts with the plain language of subdivision (b)(5) of this section, which provides that the "increase in value of property acquired prior to marriage" is nonmarital. *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

—Inheritance.

There was no transfer to the husband of an interest in a money market certificate

purchased with proceeds from inheritance so as to make the certificate subject to division upon divorce. *Hayse v. Hayse*, 4 Ark. App. 160, 630 S.W.2d 48 (1982).

Tract of land inherited by the husband during the marriage was not subject to division in a divorce action. *Busby v. Busby*, 39 Ark. App. 108, 840 S.W.2d 195 (1992).

Husband failed to produce clear and convincing evidence to rebut the presumption that inheritance money placed in joint account was separate property where the records showed that although wife did not deposit or withdraw funds from the joint account, husband engaged in several actions that support a finding that he either bestowed a gift of the money to wife, or created a tenancy by the entirety in it. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

The chancellor's finding that the husband gave the wife an interest in a houseboat was not clearly erroneous, notwithstanding the husband's contention that he used the proceeds of an inheritance to purchase the houseboat and did not intend to make a gift of an interest in it to the wife, where the husband testified that, after he talked with the seller of the houseboat, the seller prepared the bill of sale in both parties' names and that he did not object because "she was my wife." *McKay v. McKay*, 66 Ark. App. 268, 989 S.W.2d 560 (1999).

Although the houseboat was purchased from inheritance, it was held jointly and the court found that a gift had been made. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

Circuit court did not err in finding that the wife's inheritance money was not separate property and in allocating the inheritance account as marital property and dividing it equally between the parties because the wife failed to produce clear and convincing evidence that she did not intend to bestow a gift of the inheritance money to rebut the presumption of gift that arose when she placed the husband's name on her inheritance account. *Adams v. Adams*, 2014 Ark. App. 67, 432 S.W.3d 49 (2014).

Trial court erred in awarding the husband an investment account as his nonmarital property because: (1) although the evidence showed that the account was funded by the husband with proceeds

from an inheritance from his father, the account was maintained in both parties' names; (2) although the husband stated that he never contributed any marital funds to the account, the wife stated that she handled the parties' finances and used the account to pay bills during the marriage and that they would use the account to pay for anything that had been purchased if the balance on a certain credit card was too high; and (3) the husband did not present distinct and detailed information about the account and how it was used to rebut the presumption that the account was marital property when it was maintained in both parties' names. *Mason v. Mason*, 2017 Ark. App. 683, 536 S.W.3d 657 (2017).

—Insurance Proceeds.

Where wife received proceeds of her son's insurance policy after her marriage took place but the son had died before the marriage took place, insurance proceeds were the separate property of the wife. *Wright v. Wright*, 29 Ark. App. 20, 779 S.W.2d 183 (1989).

Where defendant's employer during the marriage provided a long-term disability insurance plan for its executives; where these benefits were in lieu of workers' compensation, and were not awarded as benefits for a permanent disability or for future medical costs; and where the disability entitling the defendant to collect the benefits provided by the plan occurred during the marriage, the property was acquired during the marriage and was marital property as defined by statute. *Dunn v. Dunn*, 35 Ark. App. 89, 811 S.W.2d 336 (1991).

Appellant's disability benefits did not meet one of the statutory exceptions contained in this section and were therefore marital property. *Scott v. Scott*, 86 Ark. App. 120, 161 S.W.3d 307 (2004).

Although the court concluded that an insured and her ex-husband were equal co-owners of a fire-destroyed house, it exercised its discretion under subdivision (a)(1)(A) of this section and awarded the insured 69% of the funds deposited by an insurance company with the court: (1) the insured sued the insurance company after it refused to pay her claim under her property insurance policy; (2) the ex-husband intervened in the suit after the judgment entered against the company was

affirmed on appeal; (3) the insured was entitled to a credit for the post-fire mortgage payments that she made because she was not legally obligated to make those payments and they benefitted the ex-husband, as those payments increased the amount of insurance policy proceeds available after the mortgage balance was paid off; (4) the insured was entitled to receive \$15,000 to compensate her for her time and expense in suing the insurance company; (5) the insured was also entitled to recover the entire 12% penalty paid by the company under § 23-79-208(a)(1), given the fact that the ex-husband had not actively participated in attempting to obtain payment from the insurance company; and (6) the insured could not recover attorney's fees from the ex-husband pursuant to § 23-79-208(a)(1) or § 23-79-209(a) because those statutes allowed the recovery of fees from insurance companies. *Tweedle v. State Farm Fire Cas. Co.*, No. 4:04-CV-608, 2008 U.S. Dist. LEXIS 63324 (E.D. Ark. July 22, 2008).

Life insurance proceeds did not constitute marital property that were subject to division in a divorce case; pursuant to this section, life insurance proceeds were property acquired by reason of the death of another and were exempt from the definition of "marital property" for purposes of division of assets. *Hargrove v. Hargrove*, 2015 Ark. App. 45, 453 S.W.3d 683 (2015).

—Joint Enterprise.

Wife is entitled to half interest in real estate and business where she paid portion of consideration, regardless as to who held the legal title. *Price v. Price*, 217 Ark. 6, 228 S.W.2d 478 (1950).

Where it was obvious from the evidence that it was the joint efforts of the parties which acquired property, it would be inequitable to deprive the wife of the legal and equitable ownership of one-half interest in the property. *Nelson v. Nelson*, 267 Ark. 353, 590 S.W.2d 293 (1979).

—Livestock.

It was error for the chancellor to award \$50,000 in an investment account, which represented the proceeds from a sale of cattle which occurred after the parties' marriage, to the husband since there was no proof that the cattle were the same as owned by the husband prior to the marriage and since the wife actively assisted

the husband in his cattle farming operation. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

In a divorce action, the court erred in determining that cattle were not marital assets because the cattle were purchased by the husband during the parties' marriage and while they were separated; the court should have divided the value of the cattle equally pursuant or provided an explanation why such a division would not be equitable under the circumstances. *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005).

Circuit court did not err in awarding the wife half the value of the presumed offspring of marital animals under the circumstances of the case, as the husband violated an order to sell the marital animals within 60 days. *Moore v. Moore*, 2019 Ark. 216, 576 S.W.3d 15 (2019).

—Marital Home.

In the property division following a divorce, the couple's marital residence was the wife's separate property because the husband deeded the house to her and there was nothing to indicate that the husband would regain an interest in the house or that the wife agreed to do anything in consideration for the transfer. *Horton v. Horton*, 92 Ark. App. 22, 211 S.W.3d 35 (2005).

Trial court's finding that a husband and wife intended to create a tenancy by the entirety when property was purchased was not clearly erroneous because the husband used his non-marital funds to purchase the property and to build a home, but the warranty deed conveyed title to both parties as husband and wife; in finding that the husband made a gift to the wife of the property and funds used to construct the home, the trial court expressly rejected the husband's claim that the parties intended the land and home to remain his separate property. *McCracken v. McCracken*, 2009 Ark. App. 758, 358 S.W.3d 474 (2009).

Trial court's valuation for property distribution purposes of a marital home, which was built during the parties' marriage upon the wife's non-marital land, was not clearly erroneous where there was no evidence of the before-and-after value of the property to show the existence and extent of any increase in the value of non-marital property. *Poole v.*

Poole, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

Trial court did not clearly err in failing to make an unequal division of the equity in the divorcing parties' house due to a home equity loan that was received almost a year before the parties separated pursuant to this section, as the wife provided testimony that the money had already been spent and that she used it for extra nursing school expenses, her own medical expenses, and various living expenses. *Grantham v. Lucas*, 2011 Ark. App. 491, 385 S.W.3d 337 (2011).

In this divorce action, the order finding that the parties' home was marital property was affirmed because while the wife might have intended to maintain the status of her separate property, she did not; the deed to the house was to the parties jointly, as husband and wife. *McClure v. Schollmier-McClure*, 2011 Ark. App. 681 (2011).

In a divorce action, the trial court did not err under subsection (a) of this section in awarding the husband the first \$90,000 from the sale of the marital home and equally dividing the remaining proceeds because the parties had received a credit of \$90,000 toward the property's purchase price when they traded a property the husband owned prior to the marriage for the marital property. *McCormick v. McCormick*, 2012 Ark. App. 318, 416 S.W.3d 770 (2012).

Trial court did not clearly err in awarding the husband the marital home, along with its debt; the property was given to him as a gift prior to marriage, and the court found the omission of a directive for refinancing was inadvertent, as the wife should not have been obligated to repay the mortgage on the home awarded to the husband. *Baker v. Baker*, 2013 Ark. App. 543, 429 S.W.3d 389 (2013).

Circuit court did not err in denying the mother's petition to order a sale of the marital home because the father never ceased living in the former marital residence with the children and did not abandon it; and the residence was being used "in a manner for the children" under the settlement agreement and previous modification order. *Neumann v. Smith*, 2016 Ark. App. 14, 480 S.W.3d 197 (2016).

Circuit court did not abuse its discretion in equally dividing the marital home and then giving the wife a credit for the time

she alone made the mortgage payments after the parties separated, and in giving the wife a credit for the five-acre lot proceeds that the husband used to pay his personal debts. *Holloway v. Holloway*, 2019 Ark. App. 375, 586 S.W.3d 173 (2019).

Although the wife used nonmarital funds toward the construction of the marital home, the appellate court did not find clear error in the circuit court's award of equal division of the marital home given the statutory presumption favoring equal division of marital property and the husband had countered that he made substantial contributions in the form of "sweat equity" toward the home's construction. *Holloway v. Holloway*, 2019 Ark. App. 375, 586 S.W.3d 173 (2019).

—Miscellaneous Personal Property.

In a divorce action, a trial court erred when it found that a travel trailer in which a former husband lived with his girlfriend was marital property under subsection (b) of this section when there was no evidence that indicated that the husband had any ownership interest in the trailer. *Taylor v. Taylor*, 369 Ark. 31, 250 S.W.3d 232 (2007).

Appellee left the box springs and mattress when she entered the marital home, and took objects she thought were hers, and under the circumstances, the trial court's conclusion that she abandoned her claim to the box springs and mattress was reasonable. *Wainwright v. Merryman*, 2014 Ark. App. 156 (2014).

Where husband contended that at least some of the guns in the large gun collection were his separate property, the conflicting proof on this issue was for the trial court to resolve and the trial court expressly found that the husband's testimony on this matter was not credible. *Davis v. Davis*, 2016 Ark. App. 210, 489 S.W.3d 195 (2016).

Circuit court erred in finding that a tractor was the husband's separate nonmarital property where it was purchased during the marriage with the parties' credit card, and the husband had submitted no evidence supporting the assertion that the tractor was purchased with funds from his mother. *Moody v. Moody*, 2017 Ark. App. 582, 533 S.W.3d 152 (2017).

Husband claimed that nothing in the record indicated that the "Can Am" and

the "ATV" were one and the same; because there was no proof in the record to settle the matter, the circuit court's ultimate decision to award the husband the Can Am as he requested was neither unreasonable nor clearly erroneous. *Balleger v. Balleger*, 2019 Ark. App. 269, 577 S.W.3d 66 (2019).

—Partnership Assets.

Where husband and wife operated store as partners during the marriage the husband was not entitled to the sole ownership of the store. *Phillips v. Phillips*, 236 Ark. 225, 365 S.W.2d 261 (1963).

In awarding a divorce to the wife, the chancellor should determine the value of a husband's interest in a partnership, treating accounts receivable as assets having a provable fair net present value, resulting in a monetary decree in the wife's favor, to be enforced if necessary by a charging order. *Riegler v. Riegler*, 243 Ark. 113, 419 S.W.2d 311 (1967); *Warren v. Warren*, 12 Ark. App. 260, 675 S.W.2d 371 (1984).

The trial court clearly erred when it ordered a former wife's interest in the parties' marital home to be applied to the net worth of a partnership, a business in which she had a lesser interest. *Glover v. Glover*, 4 Ark. App. 27, 627 S.W.2d 30 (1982).

A former wife's interest in a partnership and its assets, acquired during her marriage, constituted marital property, despite the wife's contention that she owned no property used in the partnership but instead only had a right to half the earnings of the partnership. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

Circuit court properly awarded a wife half of the husband's one-third interest in a family limited partnership because the partnership was created during the parties' marriage and the husband used marital funds to invest in the partnership. *Jez v. Jez*, 2016 Ark. App. 594, 509 S.W.3d 1 (2016).

Finding that a wife's law firm partnership interest was marital property was affirmed where the wife cited no authority for her argument that the partnership interest, acquired during the marriage, was not marital property, and she provided no authority that, as a matter of law, the use of nonmarital funds to satisfy the debt obligation on a marital asset

converted the asset from marital to non-marital. *Grimsley v. Drewyor*, 2019 Ark. App. 218, 575 S.W.3d 636 (2019).

—Personal Injury Claims.

The \$110,000.00 certificate of deposit, which represented a lump-sum payment for injury to the husband and which was titled in the names of both the husband and wife, should have been divided equally between the husband and wife upon divorce. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

The two future installments of the husband's personal injury settlement were properly classified as marital property. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

The chancellor's refusal to award the wife any portion of the two future installments of the husband's personal injury settlement was not against the preponderance of the evidence, where the chancellor recited the factors set forth in subdivision (a)(1) of this section and particularly mentioned the severity of the husband's injury and the likelihood he would not work again, while the wife maintained her ability to work. *McDonald v. McDonald*, 19 Ark. App. 75, 716 S.W.2d 788 (1986).

To the extent spouse acquired an enforceable right during the marriage to recover for personal injury, he acquired marital property. *Bunt v. Bunt*, 294 Ark. 507, 744 S.W.2d 718 (1988).

Except for those benefits from an unliquidated personal injury claim that would be for any degree of permanent disability or future medical expenses, the remaining benefits or elements of damage from one's personal injury claim are subject to division as marital property pursuant to subdivision (a)(1)(A) of this section. *Clayton v. Clayton*, 297 Ark. 342, 760 S.W.2d 875 (1988).

Wife's claim, that settlement proceeds of a personal injury to her late husband were marital property, held without merit; the funds belonged to his estate, to be distributed pursuant to probate law. *Ellis v. Ellis*, 315 Ark. 475, 868 S.W.2d 83 (1994).

Although former husband was permanently impaired from any type of gainful employment, since the ultimate source of his disability could have been traced back to the wounds he suffered in World War II rather than to a specific "personal injury"

sustained while employed or in consequence of a tortious act, his claim for his physical condition did not constitute a claim for "personal injury" as contemplated by subdivision (b)(6) of this section and therefore did not fall within the statutory marital-property exemption. *Mason v. Mason*, 319 Ark. 722, 895 S.W.2d 513 (1995).

Trial court did not err in a divorce action in awarding the husband all of a \$1.6 million settlement from his FELA personal injury claim because the FELA proceeds were not marital property, as defined under subdivision (b)(6) of this section; the trial court found that the entire settlement was for a degree of permanent disability and future medical expenses. *Palmer v. Palmer*, 2012 Ark. App. 607 (2012).

—Presumption.

Property acquired by either spouse during the marriage carries the presumption of being marital property; the date of the acquisition is the key factor, and property acquired separately or jointly remains as such and must be divided accordingly at the time of divorce, unless the court finds it is not equitable. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988).

Once property, whether personal or real, is placed in the names of persons who are husband and wife, without specifying the manner in which they take, there is a presumption that they own the property as tenants by the entirety and it takes clear and convincing evidence to overcome that presumption. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988).

Once property is placed equally, in the names of both husband and wife, such property is presumed to be held by them as tenants by the entirety and, thus, marital property. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

—Property Acquired After Separation.

Wife could not exclude properties deeded to her after temporary order as marital property acquired by a spouse after a legal separation, since there is no authority to hold that a temporary order is equivalent to legal separation. *Schichtel v. Schichtel*, 3 Ark. App. 36, 621 S.W.2d 504 (1981).

Where husband purchased a home while separated from his wife, but before

any divorce or maintenance decree had been entered, the house was marital property subject to division. *Lee v. Lee*, 12 Ark. App. 226, 674 S.W.2d 505 (1984).

Where trial court had entered a temporary order prior to divorce action and that order did not deal with or affect the distribution of the parties' properties, subdivision (b)(3) of this section was not applicable and property acquired by the spouse after the order was marital property to be distributed one-half to each party, unless the court found the division inequitable. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Assets acquired after separation and prior to a grant of divorce are marital property and are to be divided giving due consideration to the factors enunciated in subdivision (a)(1)(A) of this section. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988); *Cavin v. Cavin*, 308 Ark. 109, 823 S.W.2d 843 (1992).

When a chancellor declines to award a divorce and enters nothing more than a support order necessitated by a family breakup, there is no divorce from bed and board, and there is no basis for holding that property acquired by the parties thereafter is other than marital property unless it falls within some other exception found in this section. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

Funds acquired by one party and deposited into the parties' joint checking account prior to their divorce are marital property subject to division by the court. *Schumacher v. Schumacher*, 66 Ark. App. 9, 986 S.W.2d 883 (1999).

There was no error in the trial court's failure to award the husband an interest in the home and business that the wife purchased shortly before the divorce trial where she used money borrowed from her mother; although assets acquired after separation but before divorce are marital assets, there was no divisible equity in either property, they were purchased with borrowed funds, and the wife was held responsible for all indebtedness. *Davis v. Davis*, 2016 Ark. App. 210, 489 S.W.3d 195 (2016).

—Property Acquired Before Marriage.

In the division of property on granting a divorce to the wife, it was error to award to the wife sum as restoration of a sum

received from her by her husband in consideration of marriage under this section where the sum was obtained before marriage. *Oliphant v. Oliphant*, 177 Ark. 613, 7 S.W.2d 783 (1928).

Although this section provides that the increase in value of property acquired prior to the marriage remains that party's sole and separate property, the chancellor may make some other division that he deems equitable. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

Although the increase in value in property acquired prior to marriage is not marital property, it is appropriate to recognize a spouse's contributions toward that increase in value when making a property division. *Smith v. Smith*, 32 Ark. App. 175, 798 S.W.2d 442 (1990).

—Real Property.

Finding that wife was entitled to receive one-half of husband's equitable interest amount, was not clearly erroneous or clearly against the preponderance of the evidence. *Warren v. Warren*, 270 Ark. 163, 603 S.W.2d 472 (Ct. App. 1980).

Chancellor was correct in finding that wife had a marital interest in one half of "marital profit," or appreciated value, of house, but erred in failing to give her credit for that part of the purchase price which she contributed through the use of a joint down payment. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

Where husband owned house, prior to marriage, which was destroyed and rebuilt during marriage, the lot remained his separate property and was not "marital property"; the rebuilt dwelling did constitute marital property to the extent that joint funds were used to acquire the property. *Williford v. Williford*, 280 Ark. 71, 655 S.W.2d 398 (1983).

Where the former wife acquired property from her mother during the existence of the marriage for which the wife paid consideration, and where after acquiring title to the land the wife sold the timber thereon and handed the proceeds over to her mother, the chancellor did not err in treating the transaction as a loan and partial repayment and holding the acreage was marital property subject to division. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

Where the court found that the husband had made an original investment in a

home prior to marriage, the division of the proceeds of the home was modified to allow him credit for his investment. *Marshall v. Marshall*, 285 Ark. 426, 688 S.W.2d 279 (1985).

Proceeds inherited under the contracts for the sale of real properties are not marital property as defined in this section, nor were they held as tenants by the entirety since wife did not deposit them into an account so held; therefore, this amount is the sole and separate property of the wife. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988).

Without evidence of the before-and-after value of the property to show the existence and extent of any increase in the value of the nonmarital property, any reduction in debt on nonmarital property was not considered to be marital property to be divided equally; instead, the non-owning spouse was simply entitled to have the marital contribution considered in balancing the equities involved in the property division. *Powell v. Powell*, 82 Ark. App. 17, 110 S.W.3d 290 (2003).

Trial court did not err in a divorce action in equally dividing, as marital property, 20 acres of land between the parties where a quitclaim deed executed by the husband's father to the parties, as husband and wife, was presumed delivered because it was recorded. The husband failed to rebut the presumption of delivery. *Baldrige v. Baldrige*, 100 Ark. App. 148, 265 S.W.3d 146 (2007).

There was no clear error in the trial court's determination that the property of a husband and wife had already passed out of the marital estate and had been gifted to their sons because two sons had moved onto the property, and at least one son had paid for the improvements on the property; the trial court had authority to decide the parties' rights to the three six-acre parcels, which were determined to be out of the marital estate as the result of gifting the property to the sons several years earlier. *Wise v. Wise*, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

Trial court had no authority to order a husband and wife to deed property to their sons without making them parties to the divorce action. *Wise v. Wise*, 2010 Ark. App. 12, 371 S.W.3d 718 (2010).

There was considerable evidence relied on by the trial court tending to show that the farm was not a gift to the husband, but

instead constituted marital property. given in part that there was a loan to purchase the farm, the husband and wife signed a mortgage on the property, and tax returns showed note payments produced mortgage deductions claimed by the husband and wife; the court found no error. *Massey v. Massey*, 2014 Ark. App. 111, 432 S.W.3d 134 (2014).

Circuit court did not clearly err by failing to provide a basis for its order that the house be sold and the proceeds divided equally where the house was clearly acquired during the parties' marriage, and thus, it met the definition of marital property. *Branch v. Branch*, 2016 Ark. App. 613, 508 S.W.3d 911 (2016).

—Retirement Plans, Pensions, Etc.

A husband's interest in the retirement plan sponsored by his employer is marital property subject to allocation under this section in a divorce action. *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

Earnings or other property acquired by each spouse must be treated as marital property, unless falling within one of the statutory exceptions, and neither one can deprive the other of any interest in marital property by putting it temporarily beyond his or her own control, as by the purchase of annuities, participation in a retirement plan, or other device for postponing full enjoyment of the property. *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984).

A pension is the result of direct or indirect efforts expended by one or both parties to the marriage; it is additional compensation for services rendered for the employer and a right acquired during the marriage. Hence, equitable considerations mandate its inclusion for distribution, where the employee has already qualified for benefits, and the other spouse, during the marriage, has foregone enjoyment of that additional compensation represented by the cost of the plan, whether or not it requires employee contributions. *Meinholz v. Meinholz*, 283 Ark. 509, 678 S.W.2d 348 (1984).

Disability retirement benefits are marital property. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

The fact that disability retirement benefits are paid out of one's own contributions plus the contributions of all others who are not disabled does not mean they

are not marital property. *Morrison v. Morrison*, 286 Ark. 353, 692 S.W.2d 601 (1985).

Since the decision in *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984), which held that husband's interest in retirement plan sponsored by his employer is marital property subject to allocation under this section, military retirement benefits payable in the future may be considered marital property and subject to division under this section. *Womack v. Womack*, 16 Ark. App. 139, 698 S.W.2d 306 (1985).

Vested retirement benefits not yet due and payable are marital property subject to division on divorce when based on contributions made or services rendered during the marriage; thus, retirement benefits based on service of the husband prior to the marriage were his separate property, and those benefits based on service after marriage were not mere increase in value of separate property, but were marital property subject to division. *Womack v. Womack*, 16 Ark. App. 139, 698 S.W.2d 306 (1985).

Although husband's military pension plan was noncontributory, the pension was nevertheless, in effect, part of the consideration of husband's employment contract with the military, i.e., a wage substitute. As it was consideration earned during the marriage, it constituted marital property. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

Although husband entered military service prior to his marriage, subsequent military pension benefits accrued during marriage were marital property. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

It was not an abuse of the chancellor's discretion to award the wife one-half of a fractional interest in the husband's retirement pay, the fraction having a numerator of the number of years the parties were married during his military service and the denominator being the number of years the husband had served upon retirement. *Askins v. Askins*, 288 Ark. 333, 704 S.W.2d 632 (1986).

Nonvested right in military retirement did not constitute property under this section. *Durham v. Durham*, 289 Ark. 3, 708 S.W.2d 618 (1986).

The decisions in *Day v. Day*, 281 Ark. 261, 663 S.W.2d 719 (1984) and *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369

(1986), which held that military retirement benefits constitute marital property to be equally distributed upon divorce, would not be applied retroactively to a divorce decree which became final four years prior to those decisions, because it would work a great hardship on the parties and would defeat the purposes underlying the doctrine of *res judicata*. *Wiles v. Wiles*, 289 Ark. 340, 711 S.W.2d 789 (1986).

Federal law did not permit state courts to divide military retirement pensions pursuant to a divorce settlement until the Uniformed Services Former Spouses' Protection Act in 1983; however, this act was retroactive only to June 26, 1981. Where the parties were divorced in February, 1981, the chancellor was not in error in dismissing the portion of the wife's petition concerning the military retirement pension, because the decree reflected the law as it existed at the time of the divorce. *Hendricks v. Hendricks*, 18 Ark. App. 41, 709 S.W.2d 827 (1986).

Contributions by employer were not marital property when made to ex-spouse's profit sharing and pension plans after the date of divorce. *Wilson v. Wilson*, 294 Ark. 194, 741 S.W.2d 640 (1987).

Spouse's interest in a Major Needs Fund, in which all contributions were made by his employer, was vested and marital property. *Guinn v. Guinn*, 35 Ark. App. 199, 816 S.W.2d 629 (1991).

A spouse upon divorce is entitled to share in cost of living adjustments in retirement benefits applicable to the percentage of retirement benefits awarded to the spouse in the divorce decree. *Brown v. Brown*, 38 Ark. App. 99, 828 S.W.2d 601 (1992).

The language of this section does not include nonvested military benefits. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Wife who remarried her first husband was entitled to a percentage of the military retirement pay based upon the total number of years she was married to husband, not just for the number of years of the second marriage. *Christopher v. Christopher*, 316 Ark. 215, 871 S.W.2d 398 (1994).

Where husband placed pension funds in the parties' joint account, the presumption imposed by law was that he intended to create a true joint tenancy with wife,

which presumption was not overcome by his subsequent withdrawal of funds and placement of them in IRA accounts in his individual name. *Mathis v. Mathis*, 52 Ark. App. 155, 916 S.W.2d 131 (1996).

For a case showing a detailed account of how to calculate wife's share of husband's military retirement pay, see *Cherry v. Cherry*, 55 Ark. App. 178, 934 S.W.2d 936 (1996).

Enhancements to a retirement often increase in the later years and it might be inequitable to allow a person who had supported the spouse through the lean years to be deprived of those later awards, and the chancellor has considerable discretion to divide marital property other than one-half to each party when it is equitable to do so; thus the chancellor properly considered the increases in wife's salary following the separation and divorce in deciding that they constituted legitimate adjustments for retirement benefits in which husband could participate. *Brown v. Brown*, 332 Ark. 235, 962 S.W.2d 810 (1998).

Where the parties were married for the last seven of the 33 years that the wife was employed, the husband was entitled to half of seven thirty-third's of the wife's monthly pension benefit. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Where the parties were married for the last seven of the 33 years that the wife was employed, the increase in value of the wife's pre-marriage contributions to her 401(k) plan did not constitute marital property. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Where the wife's pension plan was a contribution plan, the court properly used the total contribution method to divide the plan, keeping in mind the difference in ages between the two parties. *Gray v. Gray*, 352 Ark. 443, 101 S.W.3d 816 (2003).

Pension-plan benefits are marital property to the extent that a spouse had a vested interest in those benefits; non-vested pension plans are not marital property. *Delacey v. Delacey*, 85 Ark. App. 419, 155 S.W.3d 701 (2004).

Court erred in awarding both retirement accounts to the wife where the wife's disability and need for financial security was not more pressing than the husband's disability and similar need simply because she was the "primary breadwinner"

and made contributions to the retirement accounts. *Baxley v. Baxley*, 92 Ark. App. 247, 212 S.W.3d 8 (2005).

Property owned individually by a debtor and co-owned with his non-debtor wife became part of the bankruptcy estate; accordingly, where a debtor's non-debtor wife had filed for divorce post-petition and the state court had not entered a divorce decree and divided the marital property, the wife could not claim any rights or "exemptions" to the debtor's retirement funds as the wife's rights to the retirement funds were inchoate at best. In re *Thomas*, 331 B.R. 798 (Bankr. W.D. Ark. 2005).

Trial court erred in holding that a wife had no marital interest in her former husband's full retirement benefits that had vested during marriage because the decree provided that the parties were to "divide equally the retirement which accrued during the marriage" and the wife was entitled to share in all of the husband's retirement benefits that accrued prior to the date the decree was filed, not as of the date of the hearing as the husband claimed. *Allen v. Allen*, 99 Ark. App. 292, 259 S.W.3d 480 (2007).

In a divorce action, the trial court did not err in determining that the wife was entitled to one-half of the husband's civil service retirement benefits; the trial court was not required to consider the amount the husband might have drawn if participating in the Social Security system. *Jackson v. Jackson*, 2009 Ark. App. 238, 303 S.W.3d 460 (2009).

Trial court properly ruled that a wife was not entitled to a husband's funds because they were disability income rather than retirement income; the wife's entitlement to retirement benefits, as contemplated under the divorce decree, would occur when the husband was paid benefits that were vested, irrevocable, or permanent in nature instead of tied to whether or not he could work. *Hatch v. Hatch*, 2009 Ark. App. 337, 308 S.W.3d 174 (2009).

Division of a retirement account between the husband and wife was appropriate pursuant to subdivision (b)(1) of this section because the formula used by the trial court took the premarital contribution into account. The appellate court was not left with a definite and firm conviction that the trial court made a mistake

in dividing the retirement account and the sums that were withdrawn from that account. *Atchison v. Atchison*, 2012 Ark. App. 572 (2012).

Associated gain or loss of marital contributions is marital property. Where the trial court awarded the husband only half of the contributions made to the wife's 401(k) during the marriage and the husband contended he was also entitled to any associated gain or loss, the trial court on remand was to either divide the entire marital interest equally or state its basis for some other division. *Wilson v. Wilson*, 2016 Ark. App. 256, 492 S.W.3d 534 (2016).

Circuit court did not specify whether all, or part, of the 401(k)'s assets were marital property, and it could not be determined from the decree whether the circuit court equally divided marital property or distributed nonmarital property to a nonowning spouse for some reason; given this uncertainty, remand was ordered. *Thurmon v. Thurmon*, 2016 Ark. App. 497, 504 S.W.3d 675 (2016).

Award to a former wife of a portion of the former husband's active-duty retirement could not stand because the husband's active-duty retirement was not vested at the time of the divorce; reserve-duty and active-duty retirement are not unified retirement systems but should be viewed separately for purposes of marital-property division. *Myers v. Ridgley*, 2017 Ark. App. 411 (2017).

Trial court erred in its property distribution because the court did not make an unequivocal finding that a wife had a vested interest in a pension plan or designate the portion to which each party was entitled. *Garcia v. Garcia*, 2018 Ark. App. 146, 544 S.W.3d 96 (2018).

Circuit court's equal distribution of the retirement accounts was not clearly erroneous where it divided the retirement accounts equally as of the date of divorce rather than on the date of separation; although the husband argued that the wife did not make any contributions to the accounts after the separation, there was no indication that the husband could not have filed for divorce sooner. *Dac Tat Pham v. Anh Thuy Nguyen*, 2019 Ark. App. 500, 588 S.W.3d 427 (2019).

In a divorce case, the circuit court did not clearly err by failing to award the ex-wife a portion of the ex-husband's mili-

tary retirement benefits because she failed to present evidence to support a finding that the husband was vested in his military retirement at the time of the divorce. *Tompkins v. Tompkins*, 2020 Ark. App. 122, 597 S.W.3d 99 (2020).

—Stock.

Stock acquired with funds from joint account held to be marital property where evidence did not permit having of funds. *Boggs v. Boggs*, 26 Ark. App. 188, 761 S.W.2d 956 (1988).

Sale of stock is not authorized by this section. *Hodges v. Hodges*, 27 Ark. App. 250, 770 S.W.2d 164 (1989).

Where stock, acquired before marriage was exchanged for the balance existing in a profit sharing trust on the date of the plaintiff's retirement, and there were substantial increases in the value of both the profit sharing account prior to distribution and the stock obtained at the time of distribution, the chancellor erred in ruling that all of the stock was marital property under Arkansas law. *Cate v. Cate*, 35 Ark. App. 79, 812 S.W.2d 697 (1991).

It was error for the chancellor to find that shares of stock and certificates of deposit were separate nonmarital property where they were held jointly by the parties and there was no evidence to rebut the presumption that they were held as tenants by the entirety. *Thomas v. Thomas*, 68 Ark. App. 196, 4 S.W.3d 517 (1999).

Husband's stock in corporation he obtained in exchange for assets of his sole proprietorship, which he had operated for nearly 30 years before marrying the wife, was nonmarital property under subdivision (b)(2) of this section, as husband testified that strictly nonmarital property, the sole proprietorship's assets, was used to acquire the stock and the wife did not dispute that assertion. *Dalrymple v. Dalrymple*, 74 Ark. App. 372, 47 S.W.3d 920 (2001).

Trial judge did not err in crediting the value of the husband's appraiser over the wife's appraiser in determining the fair market value of the husband's medical clinic and surgery center. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Trial court did not err in valuing stock for the purpose of distribution by including a minority discount by taking the price

per share that had been used in a previous sale and used in other offers and sales of the company's stock. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Although stock the wife acquired before the marriage was not marital property, the increase in value of the stock was a marital asset and an unequal distribution of that asset of 20 percent to the husband was equitable because the initial \$25,000.00 for the purchase of the stock was paid from marital funds subsequent to the parties' marriage, and the increase in the value of the stock was not totally attributable to the efforts of the wife but was due in large part to her efforts. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Where wife had acquired stock before the marriage, under the "source of funds" rule, it was not marital property even though marital funds had been used to repay the loan from her grandparents for the purchase of the stock. *Farrell v. Farrell*, 365 Ark. 465, 231 S.W.3d 619 (2006), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Trial court erred in a divorce action in finding that a wife's stock interest in a family company was nonmarital property because the stock was marital property under subsection (b) of this section; the wife received the stock during the marriage. The stock was not acquired in exchange for nonmarital property or income; instead, it was exchanged for a note receivable. *Kelly v. Kelly*, 2011 Ark. 259, 381 S.W.3d 817 (2011).

Subdivision (a)(4) of this section requires the trial court to determine the fair market value of securities if the trial court awards money or other property in lieu of a division of stocks, bonds, and other securities; although the value of the businesses was within the range provided by expert testimony, this section requires the trial court to expressly find the value of this type of property, and it was necessary to remand this question for such a finding. *Farrell v. Farrell*, 2013 Ark. App. 23, 425 S.W.3d 824 (2013).

Trial court erred in dividing the parties' marital property because it did not assign a value to the shares of a golf course in

accordance with subdivision (a)(4) of this section when it awarded the stock to the husband. *Brown v. Brown*, 2016 Ark. App. 172 (2016).

Circuit court did not err in awarding each party one-half of the stock in each of the four corporations given the options provided in subdivision (a)(4) of this section. *Sherman v. Boeckmann*, 2016 Ark. App. 567, 506 S.W.3d 899 (2016).

Circuit court erred in allowing the husband to pay a substantial portion of the wife's share of marital property over a multi-year period. Although the parties' stock was held in closely held corporations with limited marketability, the circuit court was not relieved of its obligation to make an equitable division at the time of the divorce by its finding that the husband lacked the ability to borrow sufficient funds with which to pay the wife for her interest; under subdivision (a)(4) of this section, the court on remand should order an immediate equal division of the stock. *Farrell v. Farrell*, 2017 Ark. App. 7, 510 S.W.3d 787 (2017).

Portion of the stock that was purchased during the marriage was marital property; the stock was acquired in exchange for a note, and paying for the property with nonmarital funds did not change the character of the property. *McGahhey v. McGahhey*, 2018 Ark. App. 597, 567 S.W.3d 522 (2018).

—Stock Options.

Where a former husband held options to purchase shares of stock the chancellor properly found that the value of the options was the difference between the cost of exercising them and the worth of the stock, and he properly awarded the former wife one-half of that amount as marital property. *Richardson v. Richardson*, 280 Ark. 498, 659 S.W.2d 510 (1983).

Trial court did not err in ruling that a husband's vested stock options were marital property subject to division between the husband and his wife because its application of a North Carolina case, which held that stock options that were not exercisable as of the date of separation and that could be lost as a result of an event occurring thereafter were not vested and had to be treated as the separate property of the spouse for whom they could vest at some time in the future, was not clearly erroneous; however, the wife

was not entitled to half of the proceeds from the sale of the options subsequent to the dissolution of the marriage because she was entitled to half of what the trial court determined to be “vested” or “marital” property but only as to that percentage determined to be marital as described by the trial court’s order. *Pianalto v. Pianalto*, 2010 Ark. App. 80, 374 S.W.3d 67 (2010).

Circuit court did not err in its division of husband’s stock options because the court found that the wife’s interest in the stock awards was a quantifiable, proportional percentage of the deferred payment for the husband’s past performance for his employer during the marriage. The court’s percentage-based division of the property was appropriate and necessary as the value of the property was not immediately ascertainable at the time of the divorce. *Nauman v. Nauman*, 2018 Ark. App. 114, 542 S.W.3d 212 (2018).

Stock options were divisible marital property in part even though husband’s right to the options was dependent on his continued employment; the husband’s estate would receive the awards should he die and he acquired the right to the stock options from his employer when he began employment. The circuit court’s 2016 division was upheld, which allocated as marital property 80% of awards exercisable in 2016, 40% of awards exercisable in 2017, and none of the awards exercisable in later years. *Nauman v. Nauman*, 2018 Ark. App. 114, 542 S.W.3d 212 (2018).

—Trust Property.

The chancellor was correct in refusing to award the wife one-third of the corpus of the trust from which the husband was entitled only to monthly payments. *Kroha v. Kroha*, 265 Ark. 170, 578 S.W.2d 10 (1979).

The wife was entitled to one-third absolutely of the husband’s interest in a trust, since his interest was viewed as being personal property due to its alienability. *Gross v. Gross*, 266 Ark. 186, 585 S.W.2d 14 (1979).

It was improper for court to deny wife interest in husband’s vested rights in a profit-sharing trust agreement. *Bachman v. Bachman*, 274 Ark. 23, 621 S.W.2d 701 (1981).

—Valuation.

The chancellor’s use of a “fair market value” standard for valuing the parties’

interest in an ongoing business was not clearly erroneous. *Crismon v. Crismon*, 72 Ark. App. 116, 34 S.W.3d 763 (2000).

In a divorce action, the trial court erred by valuing the former husband’s 50 percent interest in a surgery center based on his buy-sell agreement with another shareholder instead of by determining the fair market value as required by this section; hence, on appeal the court reversed the decree as to the division of the marital estate and remanded the case for a proper valuation of the surgery center followed by redistribution of the marital estate in compliance with this section. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003).

Trial court did not err by refusing to award a former wife any interest in a limited liability company founded by a former husband and others because the valuation of the husband’s interest was merely speculative; the company had no operational history or goodwill. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

Trial court erred by deducting overhead expenses from accounts receivable in order to determine the valuation of a surgical practice because it amounted to a double deduction from the same asset; moreover, while the trial court was permitted to impose a tax rate on the receivables, it erred by applying a higher rate than the former husband was required to pay. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

In a divorce action, the trial court did not err in awarding the wife half of the value of the husband’s construction business because the trial court’s valuation of the business was within the range of expert testimony; the trial court did not assign any goodwill to the value it found for the business. *Cummings v. Cummings*, 104 Ark. App. 315, 292 S.W.3d 819 (2009).

Valuation of the shares of the husband’s business, including consideration of the prior owner’s goodwill, was not clearly contrary to the preponderance of the evidence in the parties’ divorce action; the appellate court defers to the superior position of the circuit judge to determine the credibility of witnesses and the weight to be given their testimony. *Russell v. Russell*, 2013 Ark. 372, 430 S.W.3d 15 (2013).

Husband failed to preserve any objection to the valuation date, so that issue

could not be addressed. *Walls v. Walls*, 2014 Ark. App. 729, 452 S.W.3d 119 (2014).

—Work in Progress.

“Work in progress” is marital property subject to division in a divorce action. *Meeks v. Meeks*, 290 Ark. 563, 721 S.W.2d 653 (1986).

Redivision of Property.

Wife’s false statement during the course of negotiation concerning marital property that she had spent money her husband had given her for living expenses when in fact she had used it to make an interest-free loan to a third party in return for which she received a promissory note should not have been considered by the trial court as a significant factor in the redivision of the parties’ property and doctrine of unclean hands should not have been applied. *Estate of Houston v. Houston*, 31 Ark. App. 218, 792 S.W.2d 342 (1990).

Chancellor should not have considered the fact that wife’s needs had diminished because of her death as a significant factor in redistributing the parties’ property. *Estate of Houston v. Houston*, 31 Ark. App. 218, 792 S.W.2d 342 (1990).

Relationship to Alimony.

Division of marital property and the award of alimony are complementary devices that a circuit judge may employ to make the dissolution of a marriage as equitable as possible. *Russell v. Russell*, 2013 Ark. 372, 430 S.W.3d 15 (2013).

Under the unique facts of this case, the circuit court did not err in ordering temporary alimony payments as a complementary device to offset the unequal distribution of marital property. The husband’s business was a ready source of income (circuit court awarded entire 33% interest in business to husband and ordered alimony payments of \$11,370 per month for 24 months to wife, a sum that on full payment was approximately equal to the value of the wife’s share of the business). *Russell v. Russell*, 2013 Ark. 372, 430 S.W.3d 15 (2013).

In the parties’ divorce action, an award of alimony was not in actuality a “forced buy” of stock because the alimony and division of marital property were not the same thing. *Russell v. Russell*, 2013 Ark. 372, 430 S.W.3d 15 (2013).

Remarriage.

Chancellor’s finding that the parties intended to abrogate the property settlement which they had made in at the time of their first divorce upon their remarriage was not clearly erroneous; thus, all of the property involved in the first property settlement was marital property which was subject to an equal division at the time of their second divorce. *McMurtray v. McMurtray*, 275 Ark. 303, 629 S.W.2d 285 (1982).

Where parties had been married and divorced twice, it was not error for the chancellor to find that wife was entitled to some benefit by reason of marital funds having been used to pay off debts on two nonmarital farms; however, her interest should be limited to the amounts paid on the farms subsequent to the second marriage because she had been paid for her interest at the time of the first divorce. *Bagwell v. Bagwell*, 282 Ark. 403, 668 S.W.2d 949 (1984).

Where the parties settled the case after the trial had commenced and advised the chancellor of the terms of their property settlement as well as the terms of their alimony and child support settlement; but no formal agreement was dictated into the record, they did not state that they intended to create an independent contract for alimony, and the chancellor did not treat it as an independent contract, the chancellor could modify the decree ten years later and cease payments as a result of the wife’s remarriage. *Shipley v. Shipley*, 305 Ark. 257, 807 S.W.2d 915 (1991).

Res Judicata.

This section contemplated a division of the husband’s property when a decree of divorce was granted and that, if the wife failed to ask for and obtain the relief when the decree was granted, the matter became *res judicata*. *Taylor v. Taylor*, 153 Ark. 206, 240 S.W. 6 (1922).

Where husband and wife both sued for divorce and the wife asked for a division of the property the court should have heard the evidence and decided the question of property rights, but having failed to do so Supreme Court would affirm decree for the wife without prejudice to her right to maintain a suit for any interest she may have in property. *Parrish v. Parrish*, 195 Ark. 766, 114 S.W.2d 29 (1938).

Divorce decree was not *res judicata* of suit for possession of personal property. *Swanson v. Johnson*, 212 Ark. 340, 212 Ark. 349, 205 S.W.2d 702 (1947).

Denial of former wife's motion for a portion of her former husband's military retirement was proper because the parties had been divorced and their property had been divided in a final manner; thus, *res judicata* was applicable because the division of military retirement could have been litigated at the divorce hearing. *Foster v. Foster*, 96 Ark. App. 109, 239 S.W.3d 1 (2006).

Return of Nonmarital Property.

If there is any deviation from returning nonmarital property to the original owner the reasons given by the trier of fact must be sufficiently specific. *Canady v. Canady*, 285 Ark. 378, 687 S.W.2d 833 (1985).

Wife owned the windows that were installed in the husband's home, and it was not practical to return them to her, nor did she request such; the circuit court ordered the husband to pay the wife a certain amount, which represented the amount she spent from her personal funds for the windows placed in his house, and this division complied with the requirements of this section. *Fields v. Fields*, 2015 Ark. App. 143, 457 S.W.3d 301 (2015).

Sale of Lands.

Where divorce is granted to wife and if it is necessary that real estate in which she was granted a life estate be sold, the value of the life estate should be ascertained and that amount turned over to the wife from the proceeds of the sale; it is improper to turn one-third of the proceeds over to the wife. *Allen v. Allen*, 126 Ark. 164, 189 S.W. 841 (1916).

Where husband had title to certain lands in fee and he and his wife had only a life estate in other lands and lands were not susceptible of division in kind, it was proper to order the lands sold but it was error to direct the sale of the lands in *solido*. *Dowell v. Dowell*, 207 Ark. 578, 182 S.W.2d 344 (1944).

In a divorce settlement of property rights the trial court is not bound to order immediate sale of land purchased by the husband during coverture, so that it was not abuse of discretion where the court awarded exclusive possession of the land to the wife for three years subject to taxes

and retained jurisdiction to effect sale of the property, division of proceeds and enforcement of property rights and alimony award. *Jarrett v. Jarrett*, 226 Ark. 933, 295 S.W.2d 323 (1956).

Tract of land which was purchased after 1947 but which formed only connection between tract of land purchased prior to 1947 and highway, would not be ordered sold by court, since both parcels should be handled together and land purchased prior to 1947 could not be sold. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957).

Separate Property.

Husband provided clear and convincing evidence that the checking account funds remained his separate property despite the account existing in both names. *McKay v. McKay*, 340 Ark. 171, 8 S.W.3d 525 (2000).

A home owned by the husband prior to the parties' marriage was his separate property where both parties owned homes prior to their marriage. *Dial v. Dial*, 74 Ark. App. 30, 44 S.W.3d 768 (2001).

In a dissolution of marriage case, the court properly awarded the interest in a condominium to the husband where: (1) the condominium was acquired by the sole contribution of the husband, (2) he was the only party at risk on the purchase of the condominium, (3) he did not use undisclosed marital funds to purchase the condominium, (4) he did not take title to it until after the divorce was final, and (5) he intended to use the condominium as his post-marital residence. *Page v. Anderson*, 85 Ark. App. 538, 157 S.W.3d 575 (2004).

In a divorce action, the trial court did not err under subdivision (a)(2) of this section in not awarding the husband an interest in properties that the wife owned prior to their marriage because the decree awarded the husband full ownership in an entity that was titled in both parties' names, and awarded him full ownership of an investment account that he created with pre-divorce income. *Ransom v. Ransom*, 2009 Ark. App. 273, 309 S.W.3d 204 (2009).

Circuit court did not err in awarding the wife \$20,000 for a down payment on a home where the money was the wife's separate property from her inheritance, and there was no difficulty in tracing the use of that nonmarital money to help with

the down payment on the marital home. *Karolchyk v. Karolchyk*, 2018 Ark. App. 555, 565 S.W.3d 531 (2018).

Failing to award the husband his separate nonmarital property was error where the court had not designated the specific real and personal property to which each party was entitled. *Woods v. Woods*, 2020 Ark. App. 469 (2020).

Social Security Benefits.

State courts are without power to take any action to enforce a private agreement dividing future payments of Social Security benefits; such an agreement violates the federal statutory prohibition, 42 U.S.C. § 407(a), against transfer or assignment of future benefits. *Gentry v. Gentry*, 327 Ark. 266, 938 S.W.2d 231 (1997).

Standard of Review.

Overall distribution of the parties' property in the divorce proceeding was not clearly erroneous, because the wife erroneously included the children's money and the 2008 tax overpayment in her list of assets purportedly awarded to the husband, the wife did not account for the businesses' liabilities, and the testimony and exhibits introduced by the husband more than adequately demonstrated that the court equally distributed the marital estate. *Dew v. Dew*, 2012 Ark. App. 122, 390 S.W.3d 764 (2012).

While the ex-husband claimed that the circuit court should have considered his ability to pay any amount due before directing the payment thereof, he cited to no authority for his proposition, which was sufficient reason not to address his ability-to-pay claim. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

Issue of attorney's fees had to be viewed in light of the alimony and property distribution issues in order to determine whether the circuit court achieved a fair and equitable result; the ex-wife received permanent alimony and an equal share of the substantial marital property, and it was equitable and within the circuit court's broad discretion to order each party to pay for their own attorney's fees. *Webb v. Webb*, 2014 Ark. App. 697, 450 S.W.3d 265 (2014).

Tax Consequences.

The tax consequences which subsequently evolve from a property division

should not be permitted to operate inequitably, and where there were doubts as to fairness of imposition on husband of tax liability on sales of property, court should retain jurisdiction until tax results could be ascertained. *Bagwell v. Bagwell*, 282 Ark. 403, 668 S.W.2d 949 (1984).

Where there was no demonstrable federal income tax consequence resulting from the division of the property, the decree did not require a sale, and there was no evidence that a sale was imminent, the Chancellor erred in subtracting from the value of a business asset the amount of federal tax that would have to be paid in the event the asset were sold. *Grace v. Grace*, 326 Ark. 312, 930 S.W.2d 362 (1996).

Circuit court should have considered the federal income-tax consequences of the court's division of property, and by calling the payments to the wife alimony, the circuit court potentially saddled her with additional tax liabilities; equitable distribution is merely a division of the marital property of each spouse and does not constitute income to either party, and the matter was remanded for the trial court to comply with this section's requirements. *Farrell v. Farrell*, 2014 Ark. App. 601 (2014).

Timing.

A portion of a divorce decree which permitted a husband to delay payment of his wife's share of property until the sale of the home following their minor child's attaining majority or graduation from high school was not consistent with the requirement of this section that property be distributed at the time the decree is entered; therefore, the decree was modified to require the husband to pay the wife's share within a reasonable period of time. *Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982).

Where the parties in a divorce action specifically agreed that no property division was to be made at the time the limited divorce decree was entered, the trial court did not err in not ordering a property division at the time he granted the limited divorce, despite the language of this section to the effect that all marital property is to be distributed at the time the divorce decree is entered. *Forrest v. Forrest*, 279 Ark. 115, 649 S.W.2d 173 (1983).

It was not an abuse of the chancellor's discretion to ascertain the extent of marital property and evaluate it as of the date of the divorce. *Askins v. Askins*, 288 Ark. 333, 704 S.W.2d 632 (1986).

To the extent the Chancellor may have divided marital property as of the date the first divorce complaint was denied, it was error to do so; the marital property should have been divided and distributed at the time the divorce decree was entered as provided in subsection (a) of this section. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

The chancellor acted correctly in using the date of divorce, rather than the date of a remand hearing, as the date on which to value marital property. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001).

Husband's failure to object to the trial court's use of a later valuation date for the parties' assets, contrary to this section, at either his divorce hearing or a later contempt hearing, precluded appellate review of his objection. *Roberts v. Yang*, 2010 Ark. 55, 370 S.W.3d 170 (2010).

When a husband raised the issue of valuation of a joint account in a motion for a new trial, the trial court correctly ordered the account be divided as of the date of the divorce, pursuant to subdivision (a)(1)(A) of this section, and the date of the entry of the divorce decree be used for valuation of the account. *Barnes v. Barnes*, 2010 Ark. App. 822, 378 S.W.3d 766 (2010).

Circuit court did not err in failing to divide the marital property when a divorce was granted where the husband and wife had agreed to delay the disposition of their property, the court was not at liberty to overrule *Forest v. Forest*, 279 Ark. 115, 649 S.W.2d 173 (1983), and alleged error had been invited by both parties. *Wyatt v. Wyatt*, 2018 Ark. App. 177, 545 S.W.3d 796 (2018).

Circuit court did not err in valuing the property as of the parties' separation date given that the husband's unilateral actions of disposing of property were done specifically with the wife's detriment in mind. *Wyatt v. Wyatt*, 2018 Ark. App. 177, 545 S.W.3d 796 (2018).

Tort Action.

A spouse involved in a divorce, having a cause of action in tort against his or her spouse, is not required to bring that action

in the divorce case and can pursue the claim in circuit court. *Cater v. Cater*, 311 Ark. 627, 846 S.W.2d 173 (1993).

Undue Influence.

Record contained testimony that the ex-husband commanded a dominating influence over the ex-wife and that he badgered, threatened, and belittled her to accede to his demand for an interest in the ex-wife's property at a time when she was in a weakened condition, both physically and emotionally, due to the illness of her father and the death of her son; the trial court's findings of undue influence were not clearly erroneous and the court affirmed the setting aside of the deed, and the court noted that a review of case law did not reveal any time restraints for seeking to set aside a transaction that was not freely made. *Young v. Young*, 101 Ark. App. 454, 278 S.W.3d 603 (2008).

Unequal Division.

Trial judge did not abuse its discretion in denying the husband's request for an unequal division of the marital property in his favor and instead, distributing the marital property unevenly in the wife's favor because this section did not compel mathematical precision in the distribution of property; this section simply required that marital property be distributed equitably and the trial judge could consider whether the parties to the divorce needed to use marital funds to meet necessary expenses incurred during the pendency of the action, and whether the amount used was reasonable, whether fraud or overreaching occurred, and whether an offset was appropriate. *Williams v. Williams*, 82 Ark. App. 294, 108 S.W.3d 629 (2003).

Circuit court did not err in unequally dividing the stock proceeds where the order showed that both the length of the marriage and the contribution of the parties to the acquisition of the stock proceeds formed the basis for its decision to divide the property unequally; the lower court was not required to list all the factors and was entitled to weigh the factors differently in reaching its decision. *Hernandez v. Hernandez*, 371 Ark. 323, 265 S.W.3d 746 (2007).

Trial court properly considered the factors in this section when it declined to award a former wife an unequal division

of marital property because the wife had deposited her large personal injury settlement into a joint account, and she used the proceeds to make purchases of property titled in both parties' names. Moreover, equity did not compel a different result since the wife used the proceeds to purchase non-essential items, despite knowing that she was uninsurable and that she had suffered business losses over the past three years. *Singleton v. Singleton*, 99 Ark. App. 371, 260 S.W.3d 756 (2007).

Circuit court, in reaching a determination as to the equitable division of marital property under subdivision (a)(1)(A) of this section, was free to consider the husband's interest in the limited partnership, and his opportunity to double the size of his estate upon the death of his mother, and the limitation on the husband's interest in the partnership, in the form of the usufruct, was of no relevance, as the opportunity to add to his estate was a proper consideration. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Trial court considered the factors in subdivision (a)(1)(A) of this section in making an unequal distribution of marital assets, and while the ex-husband was correct that simply reciting the statutory factors did not satisfy the requirement of the statute, the trial court covered this issue in detail in its oral ruling from the bench, and this met the requirements of the statute. *Young v. Young*, 101 Ark. App. 454, 278 S.W.3d 603 (2008).

Trial court did not err by considering the husband's actions in making an unequal division of marital property, because the trial court considered the wife's diminished state of health after the husband shot her and found that the husband's violent attack left the wife without the ability to earn a living, and the husband dissipated marital assets by twice setting fire to the marital home and by transferring items of marital property, namely the tractor and vehicle, to the parties' son. *Frost v. Frost*, 2009 Ark. App. 290, 307 S.W.3d 41 (2009).

Evidence of record showed that the husband's ability to pay far exceeded that of the wife; therefore, the trial court's allocation of marital debt was not clearly erroneous and its assignment of tax liability

was not arbitrary or groundless. *Rudder v. Hurst*, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Circuit court had to make additional findings regarding whether it considered a four-wheeler marital or nonmarital property under this section, and had to recite its basis and reasons for the unequal division of property in its order, under subdivision (a)(1)(B) of this section; the circuit court did not state why it considered the four-wheeler nonmarital or why it did not divide the stimulus check equally between the parties. *Whitehead v. Whitehead*, 2009 Ark. App. 593 (2009).

Upon disposing of the parties' real property in a marital dissolution proceeding, the trial court did not err by awarding the husband no financial benefit from the residence. It was the wife's separate property, and she testified that she paid 99.9% of the bills. *Rasberry v. Rasberry*, 2009 Ark. App. 594, 331 S.W.3d 231 (2009).

Trial court did not clearly err under this section by making an unequal division and allowing a wife to keep all of her retirement benefits in the parties' divorce action, as such was an equitable distribution because during their 10-year marriage, the husband had purposely worked below his full earning capacity and remained purposely, chronically underemployed. *Grantham v. Lucas*, 2011 Ark. App. 491, 385 S.W.3d 337 (2011).

In a divorce proceeding, the trial court erred under subdivision (a)(1)(A) of this section in failing to award the husband any portion of the value of the wife's gift-store inventory; while the court attempted to make as close to a 50/50 distribution of the entire marital estate as possible, the distribution of business assets was uneven, depriving the husband of \$9,000. *Bamburg v. Bamburg*, 2011 Ark. App. 546, 386 S.W.3d 31 (2011).

Division of property was proper, because the court considered all of the relevant statutory factors under this section, and made specific findings concerning its reason for the unequal division of property; the husband acknowledged that the court was correct to consider the contributions of each party in deciding how to divide property. *Waggoner v. Waggoner*, 2012 Ark. App. 286, 423 S.W.3d 117 (2012).

Unequitable division of the property was permitted under this section, given evi-

dence of the husband's arrests, dissipation of assets, and assault of the wife causing her to lose income. *Freeman v. Freeman*, 2013 Ark. App. 693, 430 S.W.3d 824 (2013).

There was evidence and argument on all factors to be considered in an unequal division, and the trial court discussed most of those factors in its divorce decree; the unequal division of real property gave the wife, who was within two years of retirement, a house to reside in and a means of generating income from rental property, and the trial court did not clearly err in the findings that supported awarding the wife three of the four houses. *Colquitt v. Colquitt*, 2013 Ark. App. 733, 431 S.W.3d 316 (2013).

Circuit court may order an unequal distribution of marital property if the court finds an equal division to be inequitable; in such cases, the court shall recite its basis and reasons for not dividing the marital property equally. *Colquitt v. Colquitt*, 2013 Ark. App. 733, 431 S.W.3d 316 (2013).

Ex-wife, as the prevailing party on the issue of certain stock, was not required to assert alternatively to the circuit court or the court on appeal that were the stock marital, an unequal distribution should be made, and she was not barred by the law of the case doctrine from seeking an unequal distribution after the holding in the case on the first time on appeal that the stock was marital property. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

—In General.

Where chancellor's order said alimony award was not a distribution of marital property or given in lieu of such a distribution, but it then referred to the discrepancy in income which would result from the difference in profit potential between two properties, reversal of the award gave the chancellor appropriate flexibility in reconsidering the distribution of marital property, if he chose to do so, rather than readopt the unequal distribution with an explanation as this section requires. *Harvey v. Harvey*, 295 Ark. 102, 747 S.W.2d 89 (1988).

Where the chancellor awarded wife a share of various retirement benefits of husband, but stated that if she predeceased husband her share was to revert

back to the husband, in effect, she was given only a life estate in the benefits, but there was no error in awarding such a life estate as part of an unequal distribution. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988).

Default judgment was set aside under Ark. R. Civ. P. 55(c)(3) where a former husband deceived his former wife into thinking a compromise had been reached and procured her non-attendance and failure to answer a complaint; the distinction between intrinsic and extrinsic fraud had been abolished. Moreover, her assertion that she received nothing in a property distribution was sufficient to raise a meritorious defense due to the presumptions under subdivision (a)(1)(A) and subsection (b) of this section. *West v. West*, 103 Ark. App. 269, 288 S.W.3d 680 (2008).

Circuit court erred in ordering an unequal division of the parties' marital property because it did not consider the statutory factors; the court's written order, which controlled over its oral pronouncements from the bench, found the property to be marital property. *Tipton v. Tipton*, 2017 Ark. App. 601 (2017).

—Factors Considered.

The specific enumeration of certain factors for the chancellor to consider in distributing the marital property other than equally should not prevent consideration of the fact that one spouse has been convicted of conspiring to kill the other. *Stover v. Stover*, 287 Ark. 116, 696 S.W.2d 750 (1985).

Support of an adult, college student child does not fall directly within any of the nine items listed in this section to be considered in reaching an unequal distribution of a marital asset. *Hadden v. Hadden*, 320 Ark. 480, 897 S.W.2d 568 (1995).

In a divorce case, the trial court did not err in the division of the couple's property; the wife was awarded the entire value of her retirement account and one-half of her husband's business interests due to her husband's superior earning ability. *Delacey v. Delacey*, 85 Ark. App. 419, 155 S.W.3d 701 (2004).

Division of property and debt after a divorce was affirmed because the circuit court complied with this section when it discussed the factors that went into its decision to make an unequal division of the marital property; by awarding the

wife 58% of the retirement and bank accounts instead of a specific sum, the circuit court was taking into consideration any fluctuations in the market. *Horton v. Horton*, 2011 Ark. App. 361, 384 S.W.3d 61 (2011).

That the circuit court on remand found it appropriate to award stock to the ex-wife as an unequal distribution following the previous unequal award in the ex-husband's favor failed to show that a mistake was made, nor did he demonstrate error by showing that the circuit court's decision was arbitrary or groundless. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

While the ex-wife sought an unequal distribution of marital assets, the circuit court found that an unequal division was not appropriate under this section, and the decisions regarding alimony and property division were to be reviewed together because ultimately the circuit court is to make a just allocation to achieve an equitable distribution; the distribution was not clear error, as the ex-wife was not responsible for certain debts, she had a place to live rent-free, and the ex-husband acknowledged withdrawing funds but did so to pay off marital debt, a plan with which the ex-wife was in agreement at the time. *Webb v. Webb*, 2014 Ark. App. 697, 450 S.W.3d 265 (2014).

Trial court did not clearly err in awarding the wife all of a wealth management account that she jointly owned with her now-deceased mother where it did not base the division solely on the fact that the wife was the sole contributor, but considered many of the subdivision (a)(1)(A) factors and explained why they supported awarding the wife full interest in the account. *Sanders v. Passmore*, 2016 Ark. App. 370, 499 S.W.3d 237 (2016).

—Motor Vehicles.

There was no error in the chancellor's decision awarding to wife a vehicle that was debt-free, while awarding to husband a vehicle with indebtedness; this section does not compel mathematical precision in property distribution, only that marital property be distributed equitably. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

In a property division case, a husband unsuccessfully argued that the circuit court erred in its division of the marital

vehicles because the Mercedes was worth \$22,000 while the two trucks had a combined value of \$13,000. The circuit court gave the wife the vehicle that she drove, and it awarded the husband the two trucks that he used in the heating-and-air business. *Jones v. Jones*, 2014 Ark. 96, 432 S.W.3d 36 (2014).

—Reversed.

A division of marital property was improper and would be reversed where the chancellor intended to divide the property 60/40, but the actual division was much more unequal because he failed to reduce the worth of a business awarded to the husband by a substantial debt owed to a bank and because he arbitrarily added a 50 percent enhancement to the value of the business. *Hoover v. Hoover*, 70 Ark. App. 215, 16 S.W.3d 560 (2000).

—Statement of Reasons.

Appellate court would not review the alleged trial court error in the division of the marital property until the trial court complied with the requirement to state the basis and reasons for not dividing the property equally. *Davis v. Davis*, 270 Ark. 180, 603 S.W.2d 900 (Ct. App. 1980).

Where an equal division of property was made, there was no necessity for the chancellor to state his reasons for not so dividing the property. *Ausburn v. Ausburn*, 271 Ark. 330, 609 S.W.2d 14 (1980).

Where the trial court failed to provide any reasons in its order dividing the marital property that indicated the bases for awarding the former wife's one-fourth marital property interest in a partnership to her former husband, and there was nothing in the record which showed that the former wife received anything in return for the partnership interest taken from her by the court, the former wife's one-fourth interest in the partnership would be reinstated. *Glover v. Glover*, 4 Ark. App. 27, 627 S.W.2d 30 (1982).

Any exception to the rule of equal distribution will always depend upon the specific facts as reflected by the trial court's findings and conclusions. *Gentry v. Gentry*, 282 Ark. 413, 668 S.W.2d 947 (1984); *Cavin v. Cavin*, 308 Ark. 109, 823 S.W.2d 843 (1992).

If the chancellor had specific reasons for not equally dividing the parties' marital savings, he failed to state those reasons in

compliance with this section. *Duncan v. Duncan*, 11 Ark. App. 25, 665 S.W.2d 893 (1984).

The trial court sufficiently stated its reasons for an unequal distribution of the parties' premarital and marital property pursuant to the issuance of a divorce decree. *Pennybaker v. Pennybaker*, 14 Ark. App. 251, 687 S.W.2d 524 (1985).

Where appellant maintained that there was an unequal division of marital property and that the court failed to state the basis for the unequal division, the burden was upon the appellant to bring up a record sufficient to demonstrate that the trial court was in error. *Young v. Young*, 288 Ark. 33, 701 S.W.2d 369 (1986).

Where the trial court failed to award wife her interest in two notes which husband owned or in which he had an ownership interest, and wife clearly had a right to her marital interest in those notes, the trial court should have given its basis and reasons for not having awarded her one-half interest pursuant to subdivision (a)(1) of this section; therefore, the trial court's action was reversed. *Allen v. Allen*, 17 Ark. App. 38, 702 S.W.2d 819 (1986).

Where chancellor stated that he found an unequal division to be "appropriate" rather than "equitable," the appellate court could find no such significance in his choice of words and could not say that the chancellor's findings that the circumstances warranted an unequal division of property were clearly erroneous. *Franklin v. Franklin*, 25 Ark. App. 287, 758 S.W.2d 7 (1988).

Where the trial court allowed wife to keep investment accounts as the wife's sole and separate property because they were from her sole earnings, while some evidence may have supported an unequal division of marital property, the trial judge failed to state reasons in the written order supporting the unequal division; the written order listed the factors to be considered such as length of marriage and the age and health of the parties, however, the order failed to include findings explaining why such factors supported an unequal division of marital property and reversal and remand was required. *Baxley v. Baxley*, 86 Ark. App. 200, 167 S.W.3d 158 (2004).

It was necessary to remand a divorce case because the trial court failed to comply with subdivision (a)(1)(B) of this sec-

tion by giving a comprehensive explanation of why it divided the parties' marital property unequally; the trial court did not address the wife's claim that the husband took marital funds for his personal use and that she should be compensated for her share. *Watkins v. Watkins*, 2012 Ark. App. 27, 388 S.W.3d 53 (2012).

In a marital dissolution action, the court erred under subdivision (a)(1)(B) of this section in not dividing the marital equity in a certificate of deposit held in the husband's name; the court did not recite any reasons in its decree as to why its decision was equitable. *Wadley v. Wadley*, 2012 Ark. App. 208, 395 S.W.3d 411 (2012).

Trial court did explain its division in the letter opinion, but the trial court did not incorporate that opinion in the decree, and thus the court had to remand this issue for the trial court to satisfy subdivision (a)(1)(B) of this section. *Farrell v. Farrell*, 2013 Ark. App. 23, 425 S.W.3d 824 (2013).

Circuit court specifically stated that the ex-wife was entitled to an award of all of certain stock as an unequal distribution and that this award was equitable and warranted, and this explanation was not insufficient or inadequate, as the circuit court was not required to list each factor in its order; this section requires the circuit court to explain its reasons for not dividing the marital property equally, and the circuit court did just that. *Kelly v. Kelly*, 2014 Ark. 543, 453 S.W.3d 655 (2014).

There was uncertainty as to whether the circuit court's order requiring the husband to pay the wife \$13,000 per month was a payment for her share of marital property or was a payment of alimony to equalize an unequal distribution of the marital estate, and the circuit court was to clarify on remand; the circumstances left the husband with approximately 90 percent of the marital estate and the wife with approximately 10 percent, and such an unequal division required an explanation. *Farrell v. Farrell*, 2014 Ark. App. 601 (2014).

While the trial court set forth in detail its reasoning for making the distribution in its letter opinion, the letter opinion was not incorporated into the divorce decree, and the decree did not repeat the trial court's detailed findings for the division of

the marital property that had been stated in the trial court's letter opinion; therefore, the case was remanded. *Brown v. Brown*, 2016 Ark. App. 172 (2016).

In a divorce case, the circuit court's order distributing the parties' marital property was entered in error because it failed to consider or recite any of the factors in subdivision (a)(1)(A) of this section when it did not equally divide the ex-husband's military retirement as such benefits were marital property; the circuit court's distribution of the ex-wife's 401(k) account was unclear as the decree first stated that the parties would split the account equally, but then stated that all 401(k) accounts would be the parties' separate property; and, although the decree stated that the parties would each be responsible for debts in their individual names, no findings were made concerning joint debt, and the circuit court did not distribute the joint debt. *Hayden v. Hayden*, 2020 Ark. App. 152, 594 S.W.3d 912 (2020).

—Tax Consequences.

The court rejected the husband's argument that the chancellor found the marital property to be unequally divided but failed to take tax consequences into account; although the chancellor declined to require the wife to share in the tax consequences, neither the court's findings nor its order reflected that the chancellor failed to consider such tax consequences; rather, they reflected only that he decided that the wife did not have to share in them. *Skokos v. Skokos*, 344 Ark. 420, 40 S.W.3d 768 (2001).

—Upheld.

Where the trial judge, in a divorce action, based the unequal property distribution upon the fact that the husband was blind and unemployable, while the wife was employable and had always worked outside the home, and the judge further found that the wife had not contributed to the home expenses or payments and had not used her money for the family's benefit, the evidence supported unequal division of property. *Forsgren v. Forsgren*, 4 Ark. App. 286, 630 S.W.2d 64 (1982); *Cantrell v. Cantrell*, 10 Ark. App. 357, 664 S.W.2d 493 (1984).

The wife was properly awarded more than half of the marital estate where (1)

the parties were married for 17 years, (2) the husband earned significantly more money than did the wife, and (3) the husband was vested one-third beneficiary of an undistributed trust worth \$250,000, and was the sole heir to his mother's one-million-dollar estate. *Atkinson v. Atkinson*, 72 Ark. App. 15, 32 S.W.3d 41 (2000).

Circuit court's unequal distribution of property was affirmed where the circuit court considered the amount of money from marital assets the husband had spent on a girlfriend, in addition to the great disparity in the parties' incomes, the wife's reliance on food stamps, the parties' levels of education, and their respective roles in the marriage. *Nelson v. Nelson*, 2016 Ark. App. 416, 501 S.W.3d 875 (2016).

In dividing marital property, the circuit court adequately weighed the factors listed in this section where it explained its reasoning for the unequal division, noted the court's ability to award alimony but that the husband's ability to pay was unclear, and rather than awarding alimony, found that the wife's need was met by an unequal distribution of the marital assets and debts in order to balance the equities between the parties. *Doss v. Doss*, 2018 Ark. App. 487, 561 S.W.3d 348 (2018).

Unequal division of marital property on remand did not violate the appellate court's mandate as the appellate court's opinion invited a division and nothing in the opinion barred an unequal distribution if the lower court made the requisite statutory findings; and, under the circumstances of the case, the lower court did not clearly err in distributing the marital property unequally on remand, as the wife was disabled while the value of the husband's nonmarital property increased greatly and consideration of the husband's postdivorce income increase was statutorily allowed. *Moore v. Moore*, 2019 Ark. 216, 576 S.W.3d 15 (2019).

Trial court's unequal distribution of the parties' marital property was not clearly erroneous because the court considered the four-year duration of the marriage and the contributions of each party, the court stated that it could not determine whether the improvements to the marital residence and lot caused a corresponding increase in the value of the property of the

same amount, and the court considered the fact that the wife earned 75% of the parties' combined income and used that percentage in dividing the bank accounts. *Pratt v. Pratt*, 2019 Ark. App. 264, 576 S.W.3d 511 (2019).

It was not clear error for the circuit court to make an unequal distribution by awarding the wife \$167,236 out of the husband's share of his 401k, this representing one-half of the parties' marital interest in a partnership. It was not clear error to find that there was some portion of the partnership that was marital, nor was it error to consider that marital portion when making an unequal distribution by awarding the husband all the marital interest in the partnership and awarding the wife a portion of the husband's 401k, as the circuit court considered the statutory factors in writing. *Perry v. Perry*, 2020 Ark. App. 63, 594 S.W.3d 126 (2020).

Waiver.

Wife waived any rights she may have had in retirement fund by failing either to assert those rights in divorce action or to appeal from court's failure to effect the statutorily mandated property division in the divorce decree. *Mitchell v. Meisch*, 22 Ark. App. 264, 739 S.W.2d 170 (1987); *Jones v. Jones*, 26 Ark. App. 1, 759 S.W.2d 42 (1988).

Husband's claim that a business was not subject to division by the trial court was moot because the husband waived the claim by voluntary payment of the judgment prior to his appeal; the husband's payment to the wife of the entire amount was voluntary and constituted a waiver of the issue on appeal because he did not file a supersedeas bond or make an attempt to stay the judgment until an appeal could be made. *Beck v. Beck*, 2017 Ark. App. 311, 521 S.W.3d 543 (2017).

Cited: *Biddle v. Biddle*, 206 Ark. 623, 177 S.W.2d 32 (1944); *Alexander v. Alexander*, 227 Ark. 938, 302 S.W.2d 781

(1957); *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957); *White v. White*, 228 Ark. 732, 310 S.W.2d 216 (1958); *Horn v. Horn*, 232 Ark. 723, 339 S.W.2d 852 (1960); *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965); *Ashley v. Eisele*, 247 Ark. 281, 445 S.W.2d 76 (1969); *Walker v. Walker*, 248 Ark. 93, 450 S.W.2d 1 (1970); *Law v. Law*, 248 Ark. 894, 455 S.W.2d 854 (1970); *McNew v. McNew*, 262 Ark. 567, 559 S.W.2d 155 (1977); *Milne v. Milne*, 266 Ark. 900, 587 S.W.2d 229 (Ct. App. 1979); *Pendergist v. Pendergist*, 267 Ark. 1114, 593 S.W.2d 502 (1980); *Godwin v. Godwin*, 268 Ark. 364, 596 S.W.2d 695 (1980); *Barron v. Barron*, 1 Ark. App. 323, 615 S.W.2d 394 (1981); *Pinkston v. Pinkston*, 278 Ark. 233, 644 S.W.2d 930 (1983); *Mitchell v. Mitchell*, 278 Ark. 619, 648 S.W.2d 51 (1983); *Wagh v. Wagh*, 7 Ark. App. 122, 644 S.W.2d 630 (1983); *Coleman v. Coleman*, 7 Ark. App. 280, 648 S.W.2d 75 (1983); *Callaway v. Callaway*, 8 Ark. App. 129, 648 S.W.2d 520 (1983); *Boyle v. Donovan*, 724 F.2d 681 (8th Cir. 1984); *Bennett v. McGough*, 281 Ark. 414, 664 S.W.2d 476 (1984); *Carrick v. Carrick*, 13 Ark. App. 42, 679 S.W.2d 800 (1984); *Woods v. Woods*, 285 Ark. 175, 686 S.W.2d 387 (1985); *Farris v. Farris*, 287 Ark. 479, 700 S.W.2d 371 (1985); *Glover v. Glover*, 15 Ark. App. 79, 689 S.W.2d 592 (1985); *Potter v. Easley*, 288 Ark. 133, 703 S.W.2d 442 (1986); *Harvey v. Harvey*, 298 Ark. 308, 766 S.W.2d 935 (1989); *Layman v. Layman*, 300 Ark. 583, 780 S.W.2d 560 (1989); *Crowder v. Crowder*, 303 Ark. 562, 798 S.W.2d 425 (1990); *Nowell v. Nowell*, 31 Ark. App. 78, 787 S.W.2d 698 (1990); *Bolan v. Bolan*, 32 Ark. App. 65, 796 S.W.2d 358 (1990); *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996); *Grider v. Grider*, 62 Ark. App. 99, 968 S.W.2d 653 (1998); *Dunavant v. Dunavant*, 66 Ark. App. 1, 986 S.W.2d 880 (1999); *Cooper v. Cooper*, 2013 Ark. App. 748, 431 S.W.3d 349 (2013).

9-12-316. Property settlements.

In any divorce suit in which a written property settlement involving real property is entered into by the parties and reference is made to the settlement in the divorce decree, a copy of that portion of the property settlement involving real property shall be filed and recorded with the divorce decree.

History. Acts 1969, No. 398, § 2; A.S.A. 1947, § 34-1214.1.

RESEARCH REFERENCES

ALR. Divorce decree or settlement agreement as affecting divorced spouse's right to recover as named beneficiary on former spouse's individual retirement account. 99 A.L.R.5th 637.

Division of lottery proceeds in divorce proceedings. 124 A.L.R.5th 537.

Spouse's professional degree or license as marital property for purposes of alimony, support, or property settlement. 3 A.L.R.6th 447.

Inherited Property as Marital or Separate Property in Divorce Action. 38

A.L.R.6th 313.

Divorce and Separation: Appreciation in Value of Separate Property During Marriage with Contribution by Either Spouse as Separate or Community Property (Doctrine of "Active Appreciation"). 39 A.L.R.6th 205.

Social Security Spousal Benefits in Equitable Property Division in Divorce Proceedings. 44 A.L.R.7th Art. 1 (2019).

CASE NOTES

ANALYSIS

Independent Contract.
Modification.

Independent Contract.

Wording of the property settlement agreement and the actions of the parties at the time of the divorce clearly showed that the parties intended to have an independent contract. *Kennedy v. Kennedy*, 53 Ark. App. 22, 918 S.W.2d 197 (1996).

Modification.

Chancery court did not have authority to modify alimony payments when the

alimony provision was part of the parties' written agreement, which was an independent contract between the parties; the decree of alimony was based on a property settlement agreement between the parties which was incorporated in the decree and approved by the court as an independent contract, but did not merge into the court's award and was not subject to modification except by consent of the parties. *Kennedy v. Kennedy*, 53 Ark. App. 22, 918 S.W.2d 197 (1996).

9-12-317. Dissolution of estates by the entirety or survivorship.

(a) Hereafter, when any circuit court in this state renders a final decree of divorce, any estate by the entirety or survivorship in real or personal property held by the parties to the divorce shall be automatically dissolved unless the court order specifically provides otherwise, and in the division and partition of the property, the parties shall be treated as tenants in common.

(b) Notwithstanding subsection (a) of this section or any other law to the contrary, when one (1) of the parties to the estate by the entirety has been found guilty or has pleaded guilty or nolo contendere to a felony during the marriage and within three (3) years of filing the complaint for divorce and the other party to the divorce did not benefit from the felony, the circuit judge may award the property to the spouse who did not commit the felony or to both parties in any proportion deemed equitable by the circuit judge.

(c) However, when a circuit court in this state renders an absolute divorce from the bonds of matrimony or a divorce from bed and board, and the court dissolves estates by the entirety or survivorship in real or personal property under this section, the court may distribute the property as provided in § 9-12-315. The court shall set forth its reasons in writing in the decree for making an other than equal distribution to each party, when all the property is considered together, taking into account the factors enumerated in § 9-12-315(a)(1).

History. Acts 1947, No. 340, § 1; 1975, No. 457, § 1; A.S.A. 1947, § 34-1215; Acts 1991, No. 1160, § 1; 1997, No. 1119, § 1.

Cross References. Petition for partition of estate by entirety by divorced persons, § 18-60-401.

RESEARCH REFERENCES

Ark. L. Rev. Acts of 1947: Partition of Estates by Entirety, 1 Ark. L. Rev. 220.

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Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

CASE NOTES

ANALYSIS

In General.

Applicability.

Adverse Possession.

Death of Party.

Disposition of Property.

Final Decree of Divorce.

Foreign Law.

Fraud.

Presumption.

Property Settlement.

Remarriage.

Rent.

Repairs.

Retroactive Effect.

Withdrawal of Funds.

Note. — Subsection (c) of this section was added in 1997.

In General.

It is automatic that an estate by the entirety is changed to one in common unless the court decrees otherwise. *Villanova v. Pollock*, 264 Ark. 912, 576 S.W.2d 501 (1979).

Acts 1979, No. 705, which amended

§ 9-12-315, did not abolish this section; accordingly, § 9-12-315 does not apply to property owned as tenants by the entirety. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981) (decided prior to 1997 amendment, adding § 9-12-317(c)).

This section is the only authority for dividing estates by the entirety, and it provides for the equal division of property without regard to gender or fault. *Askins v. Askins*, 5 Ark. App. 64, 632 S.W.2d 249 (1982); *Warren v. Warren*, 11 Ark. App. 58, 665 S.W.2d 909 (1984) (decided prior to 1997 amendment, adding § 9-12-317(c)).

Where parties' residence is held as a tenancy by the entirety, that estate is automatically dissolved when the final decree is rendered, unless the chancellor specifically provided otherwise, pursuant to this section. *Creson v. Creson*, 53 Ark. App. 41, 917 S.W.2d 553 (1996).

Marital residence was owned by the husband and wife as tenants by the entirety, and thus, the circuit court had the option of disposing of the property in the manner required for the distribution of marital property, one-half to each party unless such a division would be inequi-

table; the circuit court adequately set forth its reasons for the unequal division of the property, and was not required to provide reasons specific to the marital residence, but rather to provide reasons for the unequal division when all the property is considered together, under subsection (c) of this section. *Brown v. Brown*, 373 Ark. 333, 284 S.W.3d 17 (2008), overruled in part, *Moore v. Moore*, 2016 Ark. 105, 486 S.W.3d 766 (2016).

Applicability.

This section applies only where a valid estate by the entirety has been created and has no application where one of the parties fraudulently causes his name to be added to the deed. *Johnson v. Johnson*, 237 Ark. 311, 372 S.W.2d 598 (1963).

Under this section this limited power of chancery courts to dissolve estates by the entirety is confined to cases involving a divorce. *Bebout v. Bebout*, 241 Ark. 291, 408 S.W.2d 480 (1966).

The division of property held as tenants by the entirety is governed by this section rather than § 9-12-315; this section is the only statutory authority for the division of tenancies by the entirety, and it provides for an equal division of such property without regard to gender or fault. *Lyle v. Lyle*, 15 Ark. App. 202, 691 S.W.2d 188 (1985) (decided prior to 1997 amendment, adding § 9-12-317(c)).

Adverse Possession.

Where an estate by the entirety could not be divided by the court prior to the enactment of this section, one of the owners could not claim adverse possession where the other owner quit living on the property following the divorce of the owners by the entirety. *Hubbard v. Hubbard*, 251 Ark. 465, 472 S.W.2d 937 (1971).

Death of Party.

Where action regarding property rights had been taken under submission and not finally decided by the chancellor when the death of the husband caused the action to abate, the nunc pro tunc divorce order rendered after the property aspects were submitted but before they were finally decided and before the death was of no effect. *Pendergist v. Pendergist*, 267 Ark. 1114, 593 S.W.2d 502 (1980), superseded by statute as stated in, *Standridge v. Standridge*, 298 Ark. 494, 769 S.W.2d 12 (1989).

Where a divorce proceeding was pending between couple at time of husband's death and, upon the rendition of a divorce in that action, their estate by the entirety would have dissolved automatically and they would have become tenants in common, court correctly held that husband's estate was entitled to his share of proceeds from sale of the property. *Rucks v. Taylor*, 10 Ark. App. 195, 662 S.W.2d 199 (1983), *aff'd*, 282 Ark. 200, 667 S.W.2d 365 (1984).

Disposition of Property.

Where husband and wife owned home as tenants by the entirety, the home was properly ordered sold with the proceeds to be divided equally upon granting of divorce to wife. *Carr v. Carr*, 226 Ark. 355, 289 S.W.2d 899 (1956) (decision prior to 1975 amendment).

Upon divorce, property held as a tenancy by the entirety is treated as a tenancy in common, and the court may place one of the parties in possession or may order the property sold and the proceeds divided; however, the court exceeded its authority by directing husband to give his divorced wife a quitclaim deed to his interest. *Yancey v. Yancey*, 234 Ark. 1046, 356 S.W.2d 649 (1962) (decision prior to 1975 amendment).

Where promissory notes were entireties property, it was error for the court to award the husband a greater share of the notes than the wife as a means of equalizing differences in value of real property awarded the parties. *Ramsey v. Ramsey*, 259 Ark. 16, 531 S.W.2d 28 (1975) (decision prior to 1975 amendment).

Trial court erred when it awarded land, held in tenancy by the entirety to husband as his separate property upon the dissolution of their marriage; the court, in dividing the property, should have treated the husband and wife as tenants in common of that land. *Askins v. Askins*, 5 Ark. App. 64, 632 S.W.2d 249 (1982).

In divorce action, the chancellor's action in placing wife in possession of the parties' house was certainly authorized under this section and was not clearly against the preponderance of the evidence. *Wagh v. Wagh*, 7 Ark. App. 122, 644 S.W.2d 630 (1983).

Where there was no evidence that wife, who advanced consideration for property purchased during marriage, expected it to

be held in a resulting trust, the chancellor erred in awarding wife an equitable lien against husband's one-half interest in the property. *Warren v. Warren*, 11 Ark. App. 58, 665 S.W.2d 909 (1984).

Where the husband and wife acquired a one-half interest by deed as tenants by the entirety, the trial court, pursuant to this section, properly converted this one-half interest held as tenants by the entirety into two one-quarter interests held as tenants in common. *Farris v. Farris*, 287 Ark. 479, 700 S.W.2d 371 (1985).

A court has two available options for dealing affirmatively with entireties property in the event of the dissolution of the entireties estate by divorce: it may place one of the parties in possession of the property, or it may order the property sold and the proceeds divided equally. Awarding marital property held as tenancies by entireties solely to wife as part of her half-share of the marital property was error. *Leonard v. Leonard*, 22 Ark. App. 279, 739 S.W.2d 697 (1987) (decision under prior law).

The chancellor exceeded his authority in awarding real property, held as a tenancy by the entirety, to the plaintiff, and in ordering the defendant to execute a deed to the plaintiff. *Bradford v. Bradford*, 34 Ark. App. 247, 808 S.W.2d 794 (1991) (decision under prior law).

Where wife's inheritance was used to purchase stocks, bonds, and securities, the court was wrong to hold these were her separate property for division purposes where: (1) the parties filed joint income tax returns throughout the time that they were married, and that those returns listed the income and dividends from the investments as joint property; (2) the wife considered the property "all for one and one for all"; (3) it was a relatively long period of time that the separate funds were commingled in the joint account; and (4) marital funds derived from the husband's paycheck were used to meet the tax consequences stemming from ownership of the stocks, bonds, and securities at issue. *McLain v. McLain*, 36 Ark. App. 197, 820 S.W.2d 295 (1991).

In a divorce action, the trial court erred by awarding the marital residence and its corresponding debt to the former wife, because under subsection (a) of this section the trial court was only authorized to order the property sold, give wife posses-

sion of the property until it would be sold at some future time, or leave the parties as tenants in common. *Cole v. Cole*, 82 Ark. App. 47, 110 S.W.3d 310 (2003) (decision under prior law).

Circuit court could dissolve a tenancy by the entirety and award a home to the wife even though their ownership of the home preceded the effective date of subsection (c) of this section, because they had lost title to the property for unpaid taxes pursuant to § 26-37-101, and the title was transferred back after the amendment's effective date. *Freeman v. Freeman*, 2013 Ark. App. 693, 430 S.W.3d 824 (2013).

Final Decree of Divorce.

The General Assembly intended "final decree of divorce" to refer to an absolute divorce from the bonds of matrimony for purposes of dissolving a tenancy by the entirety, by operation of law. *Jones v. Earnest*, 307 Ark. 294, 819 S.W.2d 280 (1991) (decision under prior law).

A divorce from bed and board does not constitute a final decree of divorce under subsection (a) of this section. *Jones v. Earnest*, 307 Ark. 294, 819 S.W.2d 280 (1991) (decision under prior law).

Upon divorce, the operation of law made ex-husband and ex-wife tenants in common as to their home; thus, upon ex-wife's creditors' attempt to attach a judgment lien, ex-husband was not barred from asserting the homestead exemption over ex-wife's undivided one-half-interest in the property. *Parker v. Johnson*, 368 Ark. 190, 244 S.W.3d 1 (2006).

Foreign Law.

Where divorce granted by court in another state, such court could order conveyance of lands held as tenancy by entireties. *Phillips v. Phillips*, 224 Ark. 225, 272 S.W.2d 433 (1954) (decision prior to 1975 amendment).

Where wife obtained valid divorce out of state, real property held by the couple in Arkansas as tenancy by the entirety should be converted to a tenancy in common and the proceeds of sale divided equally and husband was not entitled to claim the property as his homestead even though he occupied it as his home. *Rodgers v. Rodgers*, 271 Ark. 762, 611 S.W.2d 175 (1981).

Fraud.

Chancery court did not need to cause estate by entirety to be sold and the proceeds divided where estate brought about by fraud. *Johnson v. Johnson*, 237 Ark. 311, 372 S.W.2d 598 (1963) (decision prior to 1975 amendment).

This section has no application where one of the parties fraudulently causes his or her name to be added to the deed. *Warren v. Warren*, 273 Ark. 528, 623 S.W.2d 813 (1981).

Presumption.

Once property, whether personal or real, is placed in the names of persons who are husband and wife, without specifying the manner in which they take, there is a presumption that they own the property as tenants by the entirety and it takes clear and convincing evidence to overcome that presumption. *Lofton v. Lofton*, 23 Ark. App. 203, 745 S.W.2d 635 (1988); *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988); *Cole v. Cole*, 53 Ark. App. 140, 920 S.W.2d 32 (1996).

Arkansas law presumed that a tenancy by the entirety is automatically dissolved upon the entry of a final decree of divorce under subsection (a) of this section; this presumption was strengthened by the circuit court's decree that, as a result of the divorce, it shall be "as though the marriage relation between (the debtors) had never existed." Therefore, debtors' divorce extinguished the tenancy by the entirety and created a tenancy in common with respect to the Wilmar Property; the creation of a tenancy in common was further evidenced by the language of the property settlement agreement. In *re White*, 450 B.R. 866 (Bankr. E.D. Ark. 2011).

Property Settlement.

Property settlement resulting from a divorce decree wherein parties agreed to sell land held as tenants by the entirety and divide the proceeds did not dissolve the estate by the entireties and create tenancy in common. *Killgo v. James*, 236 Ark. 537, 367 S.W.2d 228 (1963) (decision prior to 1975 amendment).

Chancellor erred in his disposition of married couple's jointly owned four pieces of property held as tenants by the entirety by giving two lots to each spouse; the parties should hold all four lots as tenants in common. *White v. White*, 50 Ark. App. 240, 905 S.W.2d 485 (1995).

Remarriage.

Where wife was given possession of property held by the entireties by way of maintenance in divorce action and wife then remarried, the court held she was no longer entitled to exclusive possession of the estate by the entirety and chancellor had jurisdiction to change the order providing for maintenance. *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958).

Rent.

Where the divorce decree provided title to the residence be held as a tenancy in common, the chancellor erred in holding the wife liable for rental fees from the time she lived in the house, after the contingency was met, requiring the house to be sold. *Clifton v. Clifton*, 34 Ark. App. 280, 810 S.W.2d 51 (1991).

Repairs.

Where divorced parties held property as tenants in common, and the chancellor did not find repairs by the wife added any significant value to the property, or that they were permanent in character such that the property would have an enhanced permanent value, the award of actual costs of the repairs to the wife was wrong since when the property was sold, the net proceeds were to be divided evenly between the parties. *Clifton v. Clifton*, 34 Ark. App. 280, 810 S.W.2d 51 (1991).

Retroactive Effect.

Court cannot change estate in entirety to estate in tenancy in common, if estate in entirety became vested prior to March 28, 1947. *Jenkins v. Jenkins*, 219 Ark. 219, 242 S.W.2d 124 (1951); *Meadows v. Cost-off*, 221 Ark. 561, 254 S.W.2d 472 (1953); *Anderson v. Walker*, 228 Ark. 113, 306 S.W.2d 318 (1957); *Perry v. Perry*, 229 Ark. 202, 313 S.W.2d 851 (1958) (decisions prior to 1975 amendment).

Property acquired subsequent to March 28, 1947 may be sold on order of the court while property acquired prior thereto can only be sold by the mutual consent of the parties. *Brimson v. Brimson*, 227 Ark. 1045, 304 S.W.2d 935 (1957) (decision prior to 1975 amendment).

This section does not act retroactively and does not apply to entirety estates created prior to March 28, 1947. *Poskey v. Poskey*, 228 Ark. 1, 305 S.W.2d 326 (1957) (decision prior to 1975 amendment).

A holding that entirety property acquired before March 28, 1947 should be continued to be held and managed by the husband, granted a divorce on grounds of the wife's insanity, was proper where the husband was required to pay half the net income to the guardian of his divorced wife. *Wood v. Wright*, 238 Ark. 941, 386 S.W.2d 248 (1965) (decision prior to 1975 amendment).

Where property was purchased as an estate by the entirety, prior to March 28, 1947, the court in a subsequent divorce could not dissolve the estate by the entirety even if a division had been sought in the divorce proceeding. *Hubbard v. Hubbard*, 251 Ark. 465, 472 S.W.2d 937 (1971).

In partition action, chancellor held that the interest of the parties in real property had automatically been changed upon their divorce from tenants by the entirety to tenants in common even though property was bought prior to 1975 amendment, which made dissolution of estates by the entirety automatic. *Padgett v. Has-ton*, 279 Ark. 367, 651 S.W.2d 460 (1983).

Withdrawal of Funds.

Funds withdrawn from savings account held as tenancy by the entirety in contemplation of divorce should have been divided pursuant to this section. Likewise, funds withdrawn from money market account held as tenants by the entirety and

deposited into wife's separate account should have been divided under this section. *Reed v. Reed*, 24 Ark. App. 85, 749 S.W.2d 335 (1988) (decided prior to 1997 amendment, adding § 9-12-317(c)).

Where spouse withdrew funds from a joint account for living expenses, while the divorce was pending, and there was no finding of fraud or overreaching, the court could impose a constructive trust, order an accounting, or order an offset. *Guinn v. Guinn*, 35 Ark. App. 199, 816 S.W.2d 629 (1991).

Cited: *Price v. Price*, 217 Ark. 6, 228 S.W.2d 478 (1950); *Young v. Young*, 222 Ark. 827, 262 S.W.2d 914 (1953); *Harbour v. Harbour*, 229 Ark. 198, 313 S.W.2d 830 (1958); *Brown v. Brown*, 233 Ark. 422, 345 S.W.2d 27 (1961); *McIntyre v. McIntyre*, 241 Ark. 623, 410 S.W.2d 117 (1967); *Brown v. Brown*, 263 Ark. 189, 563 S.W.2d 444 (1978); *May v. May*, 267 Ark. 27, 589 S.W.2d 8 (1979); *Ausburn v. Ausburn*, 271 Ark. 330, 609 S.W.2d 14 (1980); *Bramlett v. Bramlett*, 5 Ark. App. 217, 636 S.W.2d 294 (1982); *Cook v. Lobianco*, 8 Ark. App. 60, 648 S.W.2d 808 (1983); *Perrin v. Perrin*, 9 Ark. App. 170, 656 S.W.2d 245 (1983); *Luecke v. Mercantile Bank*, 286 Ark. 304, 691 S.W.2d 843 (1985); *Flucht v. Villareal*, 28 Ark. App. 1, 770 S.W.2d 187 (1989); *Crowder v. Crowder*, 303 Ark. 562, 798 S.W.2d 425 (1990).

9-12-318. Restoration of name.

In all cases when the court finds that either party is entitled to a divorce, the court may restore the wife to the name that she bore previous to the marriage dissolved.

History. Civil Code, § 462; C. & M. 1947, No. 16, § 1; 1981, No. 302, § 1; Dig., § 3512; Pope's Dig., § 4394; Acts A.S.A. 1947, § 34-1216.

CASE NOTES

Cited: *Perrin v. Perrin*, 9 Ark. App. 170, 656 S.W.2d 245 (1983).

9-12-319. Nonresident defendants — Warning orders — Entry of decree.

In all divorce actions pending or filed in any of the circuit courts of this state where a warning order has been published against the defendant, who is a nonresident of this state, for the time and in the manner fixed by law and proof of publication has been filed with the

clerk of the circuit court, and where the report or response of the attorney ad litem appointed for the nonresident has been filed with the clerk of the court, and no answer or other defense has been filed in the circuit court by the nonresident defendant, the judge of the circuit court upon submission of the cause to him or her in his or her chambers, or at any other place in his or her district by the attorney for the plaintiff, shall hear and enter a decree in the cause that shall have the same binding force and effect, both in law and equity, as if entered in term time in the county where the decree is filed.

History. Acts 1959, No. 39, § 1; A.S.A. 1947, § 34-1219.

9-12-320. Proceedings subsequent to decree — Change of venue.

(a)(1) The court where the final decree of divorce is rendered shall retain jurisdiction for all matters following the entry of the decree.

(2)(A)(i) Either party, or the court on its own motion, may petition the court that granted the final decree to request that the case be transferred to another county in which at least one (1) party resides if, more than six (6) months subsequent to the final decree:

(a) Both of the parties to the divorce proceedings have established a residence in a county of another judicial district within the state; or

(b) One (1) of the parties has moved to a county of another judicial district within the state and the other party has moved from the State of Arkansas.

(ii) The decision to transfer a case is within the discretion of the court where the final decree of divorce was rendered.

(B) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(C) In cases in which children are involved and a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the custodial parent.

(D) Justification for transfer of a case may be based on the establishment of residence by both parties in a county or state other than the county where the final decree of divorce was rendered.

(b) If the court that granted the final decree agrees to transfer the case to another judicial district, the court shall enter an order transferring the case and charging the circuit clerk of the court of original jurisdiction to transmit forthwith certified copies of all records pertaining to the case.

(c) Subsequent to the transfer to a county in another judicial district, if the party residing in the county to which the case has been transferred removes from that county or from the State of Arkansas, the case shall be transferred back to the county of original jurisdiction or the county of residence of the party still residing in the State of Arkansas.

(d) The provisions of this section shall not repeal any laws or parts of laws in effect on March 3, 1975, relating to venue for divorce actions, but shall be supplemental thereto.

History. Acts 1975, No. 297, §§ 1, 2; § 1; 1999, No. 1491, § 1; 2001, No. 1231, A.S.A. 1947, §§ 34-1204.1, 34-1204.1n; § 1. Acts 1989, No. 184, § 1; 1999, No. 539,

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

CASE NOTES

ANALYSIS

Applicability.
Substantial Compliance.

Applicability.

Venue, under this section, refers only to those subsequent proceedings involving the two divorced parties and fails to embrace actions filed by third parties such as grandparents. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

Under the language of § 9-13-103(a)(1) and (c), grandparents are afforded the separate right to file for visitation rights with their grandchildren in situations where the child's parents are divorced, legally separated, or when a parent has died. Section 9-13-103 contains no restrictive language that would require grandparents to file their visitation action in a

divorce action filed previously by the child's parents. In fact, this section, the venue statute concerning subsequent proceedings in divorce actions, would be wholly inapplicable where the grandparents' action is precipitated because their son or daughter died and the surviving, but not divorced, parent denied them access to their grandchild. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

Substantial Compliance.

To effect a change of venue for related proceedings subsequent to a divorce decree, there must be compliance with subsection (a) of this section. *Chappell v. McMillan*, 296 Ark. 317, 756 S.W.2d 895 (1988).

Cited: *White v. Winston*, 302 Ark. 345, 789 S.W.2d 459 (1990).

9-12-321. Annulment of decree of divorce.

The proceedings for annulling a final judgment for a divorce from the bond of matrimony shall be a joint petition of the parties, verified by both parties in person, filed in the court rendering the judgment, upon which the court may forthwith annul the divorce.

History. Civil Code, § 463; C. & M. Dig., § 3513; Pope's Dig., § 4395; A.S.A. 1947, § 34-1217.

CASE NOTES

Discretion of Court.

By the use of the word "may" in this section it is clear that the chancery court has discretionary powers in considering a

petition for annulment of a divorce. *Dunn v. Dunn*, 222 Ark. 85, 257 S.W.2d 283 (1953).

9-12-322. Divorcing parents to attend parenting class.

(a) When the parties to a divorce action have minor children residing with one (1) or both parents, the court, prior to or after entering a decree of divorce, may require the parties to:

(1) Complete at least two (2) hours of classes concerning parenting issues faced by divorced parents; or

(2) Submit to mediation in regard to addressing parenting, custody, and visitation issues.

(b) Each party shall be responsible for his or her cost of attending classes or mediation.

(c) The parties may:

(1) Choose a mediator from a list provided by the judge of those mediators who have met the Arkansas Alternative Dispute Resolution Commission's requirement guidelines for inclusion on a court-connected mediation roster; or

(2) Select a mediator not on the roster, if approved by the judge.

(d) A party may move to dispense with the referral to mediation for good cause shown.

History. Acts 1999, No. 704, § 1; 2001, No. 198, § 1.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, Post Divorce and Children at Risk, 2008 Ark. L. Notes Fighting — Can It Be Predicted? Divorce 17.

9-12-323. Joint credit card accounts.

(a)(1) After a court has determined or approved a property settlement agreement establishing the party responsible for any joint credit card account debt in a divorce action maintained or being maintained in the courts of this state, the nonresponsible party may notify the issuer of the credit card of the court order by sending a written notice containing the account name and account number of the joint credit card accompanied by a certified copy of the court order and property settlement agreement, if any, by certified mail, return receipt requested to:

(A) The address that the issuer has designated for making payments on the credit card account; or

(B) The customer service address provided by the issuer.

(2) On the date the notice is processed by the issuer of the credit card, not later than the fourth business day after receipt of the notice by the issuer, the nonresponsible party shall not be liable for any new charges on the credit card, other than charges made by the nonresponsible party, but shall remain liable for the balance due prior to the date the issuer processes the notice and all interest and late fees accrued or thereafter accruing on the balance.

(b)(1) The issuer of the credit card shall:

(A) Provide the nonresponsible party with written notification of the credit card account balance as of the date of processing the notice;

(B) Remove the nonresponsible party as an authorized user of the credit card account;

(C) Either cancel the credit card or suspend the effectiveness of the credit card for a period not exceeding thirty (30) days to allow the issuer to evaluate any request by the responsible party to continue the account as a separate credit card account of the responsible party; and

(D) Apply all payment made after the date of processing the notice:

(i) First to any fees assessed against the account;

(ii) Next to the accrued interest;

(iii) Next to the principal of the debt existing on the date of processing the notice; and

(iv) Finally to the principal of any debt incurred after the date of the processing of the notice.

(c)(1) This section does not prohibit the issuer of the credit card from issuing a new credit card to the responsible party.

(2) If as a result of receiving the notice under this section, a new credit card is issued in the name of the responsible party, the issuer may:

(A) Transfer the outstanding debt to the new credit card account for which the responsible party is solely responsible; or

(B) Issue the new credit card with a zero dollar (\$0.00) balance and allow no new charges on the original credit card account, and both parties who are the obligors on the original credit card account will remain responsible for paying the debt from the original account in accordance with the terms and conditions of the original credit card account until the balance is paid in full.

(d) Proof that the nonresponsible party notified the issuer of the credit card in compliance with this section shall be an affirmative defense to any action to recover card debt resulting from any charge on the account after the date of processing of the notice.

History. Acts 2003, No. 1477, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Credit Card Debt, 26 U. Ark. Little Rock Legislation, 2003 Arkansas General Assembly, Family Law, Protection from L. Rev. 418.

9-12-324. Decree dissolving a covenant marriage.

In all divorce decrees that dissolve a covenant marriage created under the Covenant Marriage Act of 2001, § 9-11-801 et seq., the court shall enter a finding that the marriage being dissolved is a covenant marriage.

History. Acts 2005, No. 1890, § 2.

effective date of this act.”

A.C.R.C. Notes. Acts 2005, No. 1890, § 3, provided: “This act shall apply to all petitions for divorce filed on or after the

Acts 2005, No. 1890 became effective August 12, 2005.

9-12-325. Condonation abolished.

(a) The defense of condonation to any action for absolute divorce or divorce from bed and board is abolished.

(b) The abolition of the defense of condonation under this section shall not affect the application of § 9-12-308.

History. Acts 2005, No. 182, § 1.

consent, or equal guilt of parties, § 9-12-308.

Cross References. Effect of collusion,

CHAPTER 13

CHILD CUSTODY AND VISITATION

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. UNIFORM CHILD CUSTODY JURISDICTION ACT. [REPEALED.]
3. PERSONAL RECORDS OF CHILD.
4. INTERNATIONAL CHILD ABDUCTION PREVENTION ACT.

Publisher's Notes. As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

RESEARCH REFERENCES

ALR. Social worker's expert testimony on custody issue. 1 A.L.R.4th 837.

Parent's physical disability or handicap as factor in custody award or proceedings. 3 A.L.R.4th 1044.

Natural parent and stepparent: custody award. 10 A.L.R.4th 767.

Race as factor in custody proceedings. 10 A.L.R.4th 796.

Desire of child as to geographical location as factor in awarding custody or terminating parental rights. 10 A.L.R.4th 827.

Retention of custody by mother incarcerated in penal institution. 14 A.L.R.4th 748.

Necessity of requiring presence in court of both parties in proceedings relating to custody or visitation of children. 15 A.L.R.4th 864.

Joint custody. 17 A.L.R.4th 1013.

Kidnapping or related offense by taking

or removing of child by or under authority of parent or one in loco parentis. 20 A.L.R.4th 823.

Court-authorized permanent or temporary removal of child by parent to foreign country. 30 A.L.R.4th 548.

Statute allowing endangered child to be temporarily removed from parental custody. 38 A.L.R.4th 756.

Visitation of adult child against his or her wishes, parent's or relative's rights. 40 A.L.R.4th 846.

Primary caretaker role of respective parents as factor in awarding custody of child. 41 A.L.R.4th 1129.

Liability of legal or natural parent, or one who aids and abets, for damages resulting from abduction of own child. 49 A.L.R.4th 7.

Right to attorney's fees in proceeding for modification of child custody or support order after absolute divorce. 57

A.L.R.4th 710.

Transsexuality of parent as factor in award of custody of children. 59 A.L.R.4th 1170.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Separating children by custody awards to different parents — post-1975 cases. 67 A.L.R.4th 354.

Validity and construction of surrogate parenting agreement. 77 A.L.R.4th 70.

Rights and obligations resulting from human artificial insemination. 83 A.L.R.4th 295.

Child custody and visitation rights of persons infected with AIDS. 86 A.L.R.4th 211.

Authority of court, upon entering default judgement, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party. 5 A.L.R.5th 863.

Continuity of residence as factor in contest between parent and nonparent for custody of child who has been residing with nonparent — modern status. 15 A.L.R.5th 692.

Parent's use of drugs as a factor in award of custody of children, visitation rights or termination of parental rights. 20 A.L.R.5th 534.

Age of parent as factor in awarding custody. 34 A.L.R.5th 57.

Smoking as a factor in child custody and visitation cases. 36 A.L.R.5th 377.

Full faith and credit "last-in-time" rule as applicable to sister state divorce or custody judgement which is inconsistent with the forum state's earlier judgement. 36 A.L.R.5th 527.

Family court jurisdiction to hear contract claims. 46 A.L.R.5th 735.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

Mental health of contesting parent as factor in award of child custody. 53 A.L.R.5th 375.

Initial award or denial of child custody to homosexual or lesbian parent. 62 A.L.R.5th 591.

Custodial parent's homosexual or les-

bian relationship with third person as justifying modification of child custody order. 65 A.L.R.5th 591.

Custodial parent's relocation as grounds for change of custody. 70 A.L.R.5th 377.

Restrictions on Parent's Child Visitation Rights Based on Parent's Sexual Conduct. 99 A.L.R.5th 475.

Religion as Factor in Child Custody Cases. 124 A.L.R.5th 203.

Right of Parent to Regain Custody of Child After Temporary Conditional Relinquishment of Custody. 6 A.L.R.6th 229.

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Am. Jur. 24A Am. Jur. 2d, Divorce & S., § 791 et seq.

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59 Am. Jur. 2d, Parent & C., § 26 et seq.

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51 C.J.S., Kidnap., § 30 et seq.

67A C.J.S., Parent & C., § 55 et seq.

U. Ark. Little Rock L.J. Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-13-101. Award of custody — Definition.
 9-13-102. Visitation rights of brothers and sisters.
 9-13-103. Visitation rights of grandparents when child is in custody of parent — Definitions.
 9-13-104. Transfer of custody on school property.
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SECTION.

- have custody of child — Definitions.
 9-13-108. Visitation — Preference of child.
 9-13-109. Drug testing — Proceedings concerning child custody, visitation, or welfare of child — Definition.
 9-13-110. Parents who are members of armed forces — Definitions.

Preambles. Acts 2007, No. 301 contained a preamble which read:

“WHEREAS, members of the armed forces of the United States play a vital role in our national security and in the security and safety of the State of Arkansas; and

“WHEREAS, it is vital to the short-term and long-term interests of the armed forces of the United States, and therefore the nation and this state, to attract and retain qualified, competent people; a substantial number of Arkansas adults have children from relationships that have terminated through divorce or otherwise; and it is contrary to public policy to discourage these adults from service in the armed forces; and

“WHEREAS, recent national emergencies have demonstrated that noncustodial parents will sometimes attempt to use a custodial parent’s military mobilization, in and of itself, as a ‘material change in circumstances’ to attempt to justify a change in custody; and

“WHEREAS, recent national emergencies have demonstrated that parents with physical custody of a child or children will sometimes use the fact of the noncustodial parent’s military mobilization as an excuse to deny or curtail the visitation of the noncustodial parent; such visitation is even more critical to both parent and child during military mobilization and deployment than it would be under normal circumstances; and

“WHEREAS, periods of military mobilization and deployment are stressful enough for a service member and his or

her children without facing the added stress of court proceedings and of potentially losing custody rights or visitation rights; and

“WHEREAS, children of members of the armed forces of the United States should not view service to their country as a negative experience to be avoided,

“NOW THEREFORE, ...”

Effective Dates. Acts 1979, No. 278, § 3: Mar 6, 1979. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that it is exceedingly difficult for divorced fathers to obtain custody of their children, notwithstanding that they are more qualified in many instances than the divorced mothers, and that this results in an environment detrimental to the welfare of the children. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force from the date of its passage and approval.”

Acts 1981, No. 920, § 3: Mar. 30, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that in some cases where parents, having custody over a child, deny that child the privilege of seeing or visiting the child’s brother(s) and/or sister(s) regardless of the degree of blood relationship; that it is in the best interests of the citizens of this State that provisions be made whereby the chancery courts may, upon petition of any brother or sister regardless of the degree of blood relationship, or parent, guardian or next friend of

such party, grant such brother or sister regardless of the degree of blood relationship reasonable rights of visitation with any brother(s) and/or sister(s) regardless of the degree of blood relationship whose parents have denied such access; that this Act is designed to specifically authorize the chancery courts to grant such visitation rights and to issue orders necessary to enforce such visitation rights and should be given immediate effect."

Acts 1987, No. 17, § 3: Feb. 9, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 403 of 1985 was intended to apply only when the marital relationship between the parents of a child has been severed by death, divorce or legal separation; that Act 403 contains language which may result in confusion regarding its applicability; that this Act eliminates that confusing language; and that this Act should be given immediate effect in order to prevent a misinterpretation of the law to the detriment of children. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1999, No. 708, § 7: July 1, 1999. Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the effectiveness of this act on July 1, 1999 is essential to the operation of the state court system, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1999 could work irreparable harm upon the proper administration and provision of essential governmental progress. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on July 1, 1999."

Acts 2003, No. 652, § 3: Mar. 25, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that our grandparents visitation law has been declared substantially unconstitutional by the Arkansas Supreme Court; that the Arkansas Supreme Court has asked the legislature to rewrite the law; that over fifty-five thousand (55,000) grandparents are rais-

ing their grandchildren in this state and they have no right to continue their relationship with their grandchildren if the parent limits or denies contact; that under current law, children are being denied visitation with grandparents with whom they have significant and viable relationships; that it is the public policy of this state to protect the best interest of the child; and that this act is immediately necessary to protect the best interest of children in this state because the denial of visitation with grandparents with whom the children have significant and viable relationships is harming children. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 301, § 2: Mar. 16, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that members of the armed forces are spending inordinate time and energy dealing with issues of child custody and visitation as a sole consequence of being mobilized in support of national emergencies; that such issues detract and degrade from morale, training, military readiness, and mission accomplishment and, therefore, have a direct adverse impact on the security of the United States and this state; that recent national military mobilizations of Arkansas members of the armed forces have magnified these problems; that adding the stress of potential permanent changes in custody or visitation during a time when a parent is mobilized to military service is generally not in the best interest of the child, and that this act is immediately necessary to protect the security of the United States and the State of Arkansas and to protect the best interests of children. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither ap-

proved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

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9-13-101. Award of custody — Definition.

(a)(1)(A)(i) In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child.

(ii) In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and mental capacity to reason, regardless of chronological age.

(iii) In an action for divorce, an award of joint custody is favored in Arkansas.

(B) When a court order holds that it is in the best interest of a child to award custody to a grandparent, the award of custody shall be made without regard to the sex of the grandparent.

(2)(A) Upon petition by a grandparent who meets the requirements of subdivision (a)(2)(B)(i) of this section or subdivision (a)(2)(B)(ii) of this section, a circuit court shall grant the grandparent a right to intervene pursuant to Rule 24(a) of the Arkansas Rules of Civil Procedure.

(B)(i) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or younger when:

(a) The grandchild resided with the grandparent for at least six (6) continuous months prior to the grandchild's first birthday;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(ii) A grandparent shall be entitled to notice and shall be granted an opportunity to be heard in any child custody proceeding involving a grandchild who is twelve (12) months of age or older when:

(a) The grandchild resided with this grandparent for at least one (1) continuous year regardless of age;

(b) The grandparent was the primary caregiver for and financial supporter of the grandchild during the time the grandchild resided with the grandparent; and

(c) The continuous custody occurred within one (1) year of the date the child custody proceeding was initiated.

(iii) Notice to a grandparent shall be given by the moving party.

(3) For purposes of this section, “grandparent” does not mean a parent of a putative father of a child.

(4)(A) The party that initiates a child custody proceeding shall notify the circuit court of the name and address of any grandparent who is entitled to notice under the provisions of subdivision (a)(2) of this section.

(B) The notice shall be in accordance with § 16-55-114.

(5) As used in this section, “joint custody” means the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court.

(b)(1)(A)(i) When in the best interest of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents consistent with subdivision (a)(1)(A) of this section.

(ii) To this effect, the circuit court may consider awarding joint custody of a child to the parents in making an order for custody.

(iii) If, at any time, the circuit court finds by a preponderance of the evidence that one (1) parent demonstrates a pattern of willfully creating conflict in an attempt to disrupt a current or pending joint-custody arrangement, the circuit court may deem such behavior as a material change of circumstances and may change a joint custody order to an order of primary custody to the nondisruptive parent.

(iv) If a modification of a child custody decree is based on the active duty status of a parent as a member of the United States Armed Forces deployed outside of the United States or the federal active duty status of a parent as a member of a state National Guard or reserve component:

(a) Any modification of the child custody decree shall:

(1) Be temporary; and

(2) Revert back to the previous child custody decree at the end of the deployment or federal active duty unless both parties consent to a modification that continues after the deployment or federal active duty; and

(b) The deployment or federal active duty status shall be considered the equivalent of daily parental presence and parental involvement with the child.

(v) Child support under a joint custody order is issued at the discretion of the court and shall:

(a) Be consistent with Supreme Court Administrative Order No. 10 — Arkansas Child Support Guidelines; or

(b) Deviate from Supreme Court Administrative Order No. 10 — Arkansas Child Support Guidelines as permitted by the rule.

(B) If a grandparent meets the requirements of subdivision (a)(2)(B)(i) of this section or subdivision (a)(2)(B)(ii) of this section and is a party to the proceedings, the circuit court may consider the continuing contact between the child and a grandparent who is a

party, and the circuit court may consider orders to assure the continuing contact between the grandparent and the child.

(2) To this effect, in making an order for custody, the court may consider, among other facts, which party is more likely to allow the child or children frequent and continuing contact with the noncustodial parent and the noncustodial grandparent who meets the requirements of subdivision (a)(2)(B)(i) of this section or subdivision (a)(2)(B)(ii) of this section.

(c)(1) If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a directive pursuant to this section.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

(d)(1) If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

(2) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

(3) There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.

(e)(1) The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

(2) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(3)(A) The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases.

(B)(i) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(ii) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(4) When attorneys are appointed pursuant to subdivision (e)(2) of this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(5)(A) When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(B) The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(6) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(7) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council, Inc. and the Administrative Rules Subcommittee of the Legislative Council.

(8)(A) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(B) Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

History. Acts 1979, No. 278, § 1; A.S.A. 1947, § 34-2726; Acts 1997, No. 905, § 1; 1997, No. 1328 § 1; 1999, No. 708, § 2; 2001, No. 1235, § 1; 2001, No. 1497, § 1; 2003, No. 92, § 1; 2005, No. 80, § 1; 2007, No. 56, § 1; 2011, No. 344, § 2; 2013, No. 1156, §§ 1-3; 2019, No. 315, § 713; 2019, No. 906, § 1.

Amendments. The 2019 amendment by No. 315 deleted “and Regulations” following “Rules” in (e)(7).

The 2019 amendment by No. 906 inserted (b)(1)(A)(iv) and redesignated former (b)(1)(A)(iv) as (b)(1)(A)(v).

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Comment Note: In Camera Examination or Interview of Child in Custody Proceedings. 9 A.L.R.7th Art. 6 (2016).

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CASE NOTES

ANALYSIS

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In General.

There is, in effect, no "final order" in a custody case, until the children have reached their majority; in essence, all orders of custody are "temporary" by their very nature. *Purtle v. Committee on Professional Conduct*, 317 Ark. 278, 878 S.W.2d 714 (1994).

Joint custody or equally divided custody of minor children is disfavored in Arkansas; however, subdivision (b)(1)(A)(ii) of this section specifically permits a court to consider such an award. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006) (decision under prior law).

Under Ark. R. App. P. Civ. 3(e), the appellate court did not have jurisdiction to entertain the father's argument pertaining to custody as he made no mention in notice of appeal of divorce decree, in which the trial court granted custody of the child to the mother; the mother could relocate to Australia with the child, and a standard visitation schedule with the child by the father was not feasible given the circumstances of the case. *Rawe v. Rawe*, 100 Ark. App. 90, 264 S.W.3d 549 (2007).

Circuit court did not err in awarding custody of the parties' child to the wife where the circuit court found that the wife was the primary caregiver; no evidence was presented to contradict the wife's tes-

timony that she drank less since the separation and there was no evidence to show that the wife suffered from bulimia. *Whitehead v. Whitehead*, 2009 Ark. App. 593 (2009).

Where the husband of a mother involved in a custody modification was a sex offender and resided in the home with the mother's minor child, thereby creating a situation in which the father and the mother of the child could no longer agree who should have primary physical custody of the child, it was error for the circuit court to continue the joint custody based on the best interests of the child under subdivision (b)(1)(A)(ii) of this section because joint custody or equally divided custody of minor children was permissible. *Peck v. Peck*, 2009 Ark. App. 731 (2009).

Purpose.

The clear language of the section indicates that the legislature fully intended to abolish any legal preference given a parent when that preference is based on gender. *Drewry v. Drewry*, 3 Ark. App. 97, 622 S.W.2d 206 (1981); *Riddle v. Riddle*, 28 Ark. App. 344, 775 S.W.2d 513 (1989).

Applicability.

Although one parent contended that the other parent's aggressive behavior and demeanor constituted a material change because it could be likened to the type of behavior addressed in subdivision (b)(1)(A)(iii) of this section, that subdivision was not applicable because the parents did not share joint custody. *Williams v. Geren*, 2015 Ark. App. 197, 458 S.W.3d 759 (2015).

Attorney Ad Litem.

Assuming that the order awarding attorney's fees to the ad litem attorney was required to be sent to the Administrative Office of the Courts and that it was not, the mother did not show prejudice because this section allows the circuit court to order the parties to pay the entire amount of the ad litem's attorney's fees and there was extensive testimony at trial about both parties' incomes and ability to pay the fees. *Szwedo v. Cyrus*, 2019 Ark. App. 23, 570 S.W.3d 484 (2019).

Basis of Award.

In a divorce and custody matter, the trial court did not err in failing to award

joint custody to the parties where the record plainly demonstrated that the parties could not cooperate well enough to share custody and where the evidence overall demonstrated that the mother was a better choice of custodial parent. *Poole v. Poole*, 2009 Ark. App. 860, 372 S.W.3d 420 (2009).

Circuit court did not err by granting sole custody of the children to the mother because the court relied on the facts that the mother had been the primary caregiver during the parties' marriage and that, after the divorce, the mother had continued to be the primary decision-maker regarding the children's educational and medical matters. Further, as to the alleged domestic abuse by the mother's second husband under subsection (c) of this section, many of the contentions concerning the abuse were credibility determinations to be decided by the circuit court. *Montez v. Montez*, 2019 Ark. App. 61, 572 S.W.3d 401 (2019).

—In General.

Children of tender years need a mother's care and the custody of the children should not be divided. *Disheroon v. Disheroon*, 211 Ark. 519, 201 S.W.2d 17 (1947).

While it is unusual to award custody of young children to any one other than their mother, it is not unheard of and where estimable evidence existed in support of the chancellor's award of custody of children to the father, the decision would not be reversed. *Stephenson v. Stephenson*, 237 Ark. 724, 375 S.W.2d 659 (1964).

Denial of a petition to take custody of a father's children was not against clear preponderance of evidence. *Mabry v. Mabry*, 243 Ark. 543, 420 S.W.2d 856 (1967).

Evidence sufficient to sustain court finding that husband was entitled to legal custody of children. *Miller v. Johnson*, 252 Ark. 697, 480 S.W.2d 574 (1972).

While it is permissible for the chancellor to make an award of custody or visitation after hearing the opinions of experts, he cannot delegate this judicial function to someone outside the court, especially to an expert employed by one of the parties. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

Where a person stands in loco parentis to a child, rather than a person or persons

who simply have a relationship with the child, the finding of an *in loco parentis* relationship is different from the grandparent relationships found in prior Arkansas precedent because it concerns a person who in all practical respects is a parent; further, the status of *in loco parentis* permits, where circumstances warrant, that a stepparent be granted visitation with a stepchild after a divorce. *Robinson v. Ford-Robinson*, 88 Ark. App. 151, 196 S.W.3d 503 (2004), *aff'd*, 362 Ark. 232, 208 S.W.3d 140 (2005).

—Drug Use.

Chancellor did not abuse his discretion in considering prescription drug use of parent seeking custody as a factor in determining what was in child's best interest, where he found parent was taking some of the drugs for mood swings and child needed stability. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

Chancellor could consider that parent seeking custody had gone to the trouble and expense of having tests for illegal drug use performed, because it went to the credibility of his testimony that he had stopped using illegal drugs, although the results of the tests were not introduced after opposing counsel objected to their admission. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

—Grandparents.

Paternal grandparents could not prevail against mother in action over custody of children in absence of a showing that modification of decree was to the best interest of the children, it being firmly settled that, as between a parent and a grandparent, the law awards custody to the parent unless he or she is incompetent or unfit to have the custody of the children. *Feight v. Feight*, 253 Ark. 950, 490 S.W.2d 140 (1973).

In child custody matters, the court must keep in view primarily the welfare of the minor child, and, as between parent and grandparent, the law prefers the parent unless the parent is incompetent or unfit; also custody is not awarded to comfort the emotions of either parent. *Perkins v. Perkins*, 266 Ark. 957, 589 S.W.2d 588 (Ct. App. 1979).

—To Mother.

Circuit court's award of custody to the mother was not clearly erroneous; the

mother was the primary caregiver and her schedule allowed her to drop off and pick up the child each day from daycare, and the circuit court was free to credit testimony that the father had been abusive at times towards the mother's daughter from a previous relationship and that he had hit the mother on occasion. *Thurmon v. Thurmon*, 2016 Ark. App. 497, 504 S.W.3d 675 (2016).

Burden of Proof.

Father required to return minor child to the mother where the chancellor erred in shifting the burden of proof away from the father, as the party seeking custody modification, to require the mother, the custodial parent, to prove her ability to adequately provide a stable home environment for the child. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

Change in Custody Not Warranted.

The fact that the female children were soon to enter puberty was not a material change in circumstances allowing a change in custody from the father to the mother. *Harrington v. Harrington*, 55 Ark. App. 22, 928 S.W.2d 806 (1996).

Trial court erred by changing custody based on a mother's motion to relocate because there was no evidence to support a finding that the mother was attempting to move without permission of the court; moreover, the mother was not intentionally frustrating the father's visitation rights. *Durham v. Durham*, 82 Ark. App. 562, 120 S.W.3d 129 (2003).

Change of custody from mother to father was unwarranted as no material change in circumstances had occurred; a finding that the mother was in contempt was insufficient to justify such a change where the children were well-cared for, doing well in school, and the father's living conditions were less than desirable. *Bernal v. Shirley*, 96 Ark. App. 148, 239 S.W.3d 11 (2006).

Change in custody of two minor children from the mother to the father based solely on the children's preferences was improper as a determination first had to be made as to whether a material change in circumstances had occurred, and the trial court specifically found that there was no change in circumstances. *Henley v. Medlock*, 97 Ark. App. 45, 244 S.W.3d 16 (2006).

Appellate court erred in overturning a trial court order denying a mother's motion for a change of custody because the mother failed to prove a material change of circumstances so as to justify a change of custody; the child continued to thrive in the father's custody and was a good student despite conflicts between the parents. *Stehle v. Zimmerebner*, 375 Ark. 446, 291 S.W.3d 573 (2009).

Record did not support the initial material change of circumstances finding, because the scattering of petty complaints did not amount to a failure to foster of a significant degree to support a finding of changed circumstances. *Byrd v. Vanderpool*, 104 Ark. App. 239, 290 S.W.3d 610 (2009).

Appellate court concluded that there was insufficient evidence of a material change of circumstances to warrant modification of custody, and that the award of joint custody was not in the child's best interest. Neither the evidence presented at the hearing nor the circuit court's final order demonstrated that the parties' bickering and name-calling was new or had significantly worsened. *Hewett v. Hewett*, 2018 Ark. App. 235, 547 S.W.3d 138 (2018).

Trial court did not err in denying the mother's motion for change of custody because joint custody was favored in Arkansas; the father stated willingness to develop a different type of communication with the mother; and, while the appellate court was troubled by the father's approach to joint custody, the appellate court was not left with a definite and firm conviction that the trial court made a mistake in finding there had not been a sufficient change in circumstances to warrant a change in the joint-custody arrangement, or that it would not be in the children's best interest to do so. *Matthews v. Matthews*, 2018 Ark. App. 552, 562 S.W.3d 901 (2018).

Change in Custody Warranted.

Where both father and mother had remarried, and the mother had moved the children several hundred miles from where the children's father and extended family reside, the several significant changed circumstances meant that it was in the best interest of the children to be in their father's custody. *Riley v. Riley*, 45 Ark. App. 165, 873 S.W.2d 564 (1994).

Although temporary custody had been awarded to the father, the chancellor's permanent award of custody to the mother was upheld. *Milum v. Milum*, 49 Ark. App. 3, 894 S.W.2d 611 (1995).

Where parent to whom custody was originally awarded remarried to person convicted of misdemeanor narcotics offenses and harassment, and began to associate with others with criminal records in the presence of the child, such circumstances warranted a change in custody. *Stone v. Steed*, 54 Ark. App. 11, 923 S.W.2d 282 (1996).

Change of custody of thirteen-year-old boy from mother to father was affirmed where the chancellor made a difficult decision based on extensive and varied testimony, and was in a better position to determine the credibility of the witnesses and the best interest of the child. *Turner v. Benson*, 59 Ark. App. 108, 953 S.W.2d 596 (1997).

Where the father presented sufficient evidence that the mother exhibited hostility, a lack of cooperation, withheld visitation, exhibited immorality and promiscuity which was evident from her admission that she lived with a man to whom she was not married but who was the father of her younger child, failed to remain fully employed, and demonstrated irresponsibility by failing to maintain a stable home for the child, the trial judge should have found that the totality of the evidence constituted a material change in the circumstances sufficient enough to warrant a change in custody to the father; the fact that the father was taking business classes, had remarried, and had purchased a home since the time of the original decree, supported his cause. *Walker v. Torres*, 83 Ark. App. 135, 118 S.W.3d 148 (2003).

Trial court did not err in ordering a change of custody from the mother to the father where the trial court (1) determined that there had been a material change in circumstances, the abuse of another child in the home, (2) gave a detailed account of the events constituting such a change, and (3) found it to be in the best interest of the child to order a change of custody. *Miller v. Ark. Dep't of Human Servs.*, 86 Ark. App. 172, 167 S.W.3d 153 (2004).

Modification of a joint custody arrangement to give full custody to the father was appropriate based on the mother's behav-

ior in the child's presence and the parties' disagreement over a custody schedule; although the trial court inappropriately included as a factual finding that the mother, who was African American, dated only white men, no challenge to that finding was preserved for review. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Order changing custody of a child from the mother to the father was affirmed where, although trial court relied primarily on the "illicit sexual relationship" between the mother and her new husband prior to their marriage, there was other evidence of changed conditions, including the mother having six or seven different residences in the span of six years, while the father provided stability; further, while it was true that a change of circumstances of the noncustodial parent, including a claim of an improved life because of a recent marriage, was not sufficient, standing alone, to justify modifying custody, a noncustodial parent's remarriage could be considered as a factor in determining whether there had been a sufficient change in circumstances affecting the best interest of the child. *Alphin v. Alphin*, 364 Ark. 332, 219 S.W.3d 160 (2005).

Grant of father's petition to change custody was affirmed as evidence indicated that the mother had become increasingly unstable since the divorce, that she persistently failed to take the precaution of properly restraining the children with seatbelts in the car, and that she had amphetamines in her system when she got into a car accident. *Cozzens v. Cozzens*, 93 Ark. App. 415, 220 S.W.3d 257 (2005).

Trial court erred in finding that mother had failed to prove a material change in circumstances requiring a modification of custody; custodial father's arrests since the divorce and his demeanor at trial caused appellate court to be greatly concerned that he would, by his example, teach his son a confrontational approach to life that was certain to be self-destructive. *Inmon v. Heinley*, 94 Ark. App. 40, 224 S.W.3d 572 (2006).

Trial court should have granted father's motion to change custody of minor child with a form of autism where the evidence showed that the father made a difference in helping the child overcome the symp-

toms of his disorder, and the trial court's statement about discouraging custody cases resulted in reversible error. *Harris v. Grice*, 97 Ark. App. 37, 244 S.W.3d 9 (2006).

Father's petition for a custody change was granted in a case where a mother violated a court order by cohabitating with six different sexual partners and by failing to get along for the sake of the child; moreover, she lacked financial, residential, and employment stability. The change in custody was not due to the mother's sexual orientation. *Holmes v. Holmes*, 98 Ark. App. 341, 255 S.W.3d 482 (2007).

Mother's continued alienation of a father from the parties' son constituted a material change of circumstances that warranted awarding the father custody of the son and did not constitute punishment of the mother when the mother did the following: (1) refused to keep the father apprised of medical information, especially in light of the son's serious medical conditions; (2) refused to have the son ready for visitation; (3) refused the father visitation when the mother decided it was in the son's best interest to do so; and (4) refused the father the first right to babysit the son. *Sharp v. Keeler*, 99 Ark. App. 42, 256 S.W.3d 528 (2007).

Order awarding the father sole custody of the parties' three minor children was not clearly against the weight of the evidence, because there was a substantial amount of evidence that the children, who had essentially been in the sole custody of the father since the mother moved, were doing well in school, at home, and in their extracurricular activities. The children had a stable home environment as they had lived in the same home for more than five years, the children had a stable academic environment as they had all attended schools in the same school district or daycare facility, and the evidence was that they were performing well in school. *Gray v. Gray*, 101 Ark. App. 6, 269 S.W.3d 834 (2007).

Trial court did not err in finding that a change of circumstances existed and in granting a father's motion for a change of custody and relocation to Texas because the children's stepfather's conviction for child endangerment against his biological son was sufficient to support the finding that a material change of circumstances

occurred to justify reevaluating the best interests of the children. *Davis v. Sheriff*, 2009 Ark. App. 347, 308 S.W.3d 169 (2009).

Joint custody between a mother and a father with an award of primary physical custody of their child to the mother rather than the father was not in the best interests of the child and was clearly against the preponderance of the evidence because the mother's husband was a registered sex offender and subdivision (d)(2) of this section showed a clear legislative policy that was opposed to children living in the home of a sex offender. *Peck v. Peck*, 2009 Ark. App. 731 (2009).

Change of primary physical custody from a mother to a father was in the best interest of the child where during the year that the father had temporary custody, the father had provided a stable, loving, nurturing environment in which his son had thrived, the father had facilitated visitation between the child and the mother and would continue to do so, and the mother had continued to accept child support from the father and had failed to offer support of any kind. *Hatfield v. Miller*, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

There was no error in a change of custody of two teenage children from a mother to a father where the mother had attempted to alienate the children from the father by influencing them to interpret every casual physical contact with the father as sexual abuse and where the mother was indifferent to the welfare of the children when she made a decision to relocate from Arkansas to Florida. *Hanna v. Hanna*, 2010 Ark. App. 58, 377 S.W.3d 275 (2010).

Trial court's final order continuing a joint-custody arrangement under subdivision (b)(1)(A)(ii) of this section was clearly erroneous. There was a mountain of evidence demonstrating that the parties could no longer cooperate in matters affecting their children, including the father's unilateral suspension of the mother's custody, refusal to provide school information, and numerous unsubstantiated complaints to the police and the department of human services. The mother exposed the children to her new husband and exposed the children to smoke in the home. *Doss v. Miller*, 2010 Ark. App. 95, 377 S.W.3d 348 (2010).

In modifying a child custody arrangement, the trial court did not clearly err in finding that joint custody under subdivision (b)(1)(A)(ii) of this section could not continue and that it was in the best interests of the children that primary custody be awarded to the father; the parties stipulated to changed circumstances based on their inability to communicate. In considering the children's best interests, the court noted that their son saw his parents together in an occasional relationship, then saw his dad dating other women; the parents did not present a good reality for their son. *Collier v. Collier*, 2012 Ark. App. 146 (2012).

Trial court did not err in changing custody to the legal father, after the legal father saw photographic evidence the biological father hit one child on the back hard enough to leave a mark, the children had to be treated for flea bites after arriving for visitation, and the children expressed a desire to live with the legal father. *Lowder v. Gregory*, 2014 Ark. App. 704, 451 S.W.3d 220 (2014).

Child custody was modified to joint custody with shared physical custody because there was a material change in circumstances due to the parties each remarrying and the rising level of discord between the parties following their divorce. Moreover, both parties were capable parents who loved their children and were equally involved with their activities and the modified custody order was carefully fashioned to reduce the need for the parties' interaction in addressing the needs of their children. *Hoover v. Hoover*, 2016 Ark. App. 322, 498 S.W.3d 297 (2016).

Regardless of whether joint custody was favored under this section, such an award was reversible error when the cooperation between the parties was lacking, which was the case here; there was testimony by both parties that they had reached a level of discord and lack of cooperation to constitute a material change in circumstances sufficient to change their previously agreed joint-custody arrangement, and the appellate court upheld the trial court's award of primary custody to the mother. *Acklin v. Acklin*, 2017 Ark. App. 322, 521 S.W.3d 538 (2017).

Circuit court was not clearly erroneous in finding that it was in the children's best interest to change custody to their father, who had argued that the children with

him received more consistent care, a more predictable living environment, clearly segregated sleeping arrangements, and a clear school schedule; the circuit court was free to consider that the mother was dating a married man while still living with her new husband, and the children knew it. *Cordell v. Cordell*, 2018 Ark. App. 521, 565 S.W.3d 500 (2018).

Change from joint custody to custody with the father upheld; the inability to coparent and cooperate constitutes a material change in circumstances. *Case v. Van Pelt*, 2019 Ark. App. 382, 587 S.W.3d 567 (2019).

Child's Best Interest.

Trial court did not err in finding that it was in the best interest of the parties' youngest child to be placed in the mother's custody, which separated her from her three half-sisters, because the trial court heard all of the conflicting evidence, determined the credibility of the witnesses, and weighed the evidence, which supported the award of custody, where the child was doing well in the mother's care since the parties' separation and there was evidence that the mother would not frustrate the relationships between the child and her father and her half-sisters. *Starr v. Starr*, 2015 Ark. App. 110, 455 S.W.3d 372 (2015).

Circuit court did not clearly err in awarding the parties joint custody with the mother being the primary custodial parent; despite the mother's lifestyle and romantic relationships, the primary consideration in child-custody cases is the welfare and best interest of the children. The record showed that the mother had been the primary caregiver before the parties' separation and that she left because the father had kicked her out of their home; the record further showed that the relationship between the mother and father began when the mother was only 13 years old and that the father kidnapped her to Mexico, which the circuit court found reflected poorly on his character. *Hortelano v. Hortelano*, 2017 Ark. App. 98, 513 S.W.3d 890 (2017).

As to the father's assertion that the circuit court failed to consider the facts about the mother's lifestyle and the absence of her boyfriend from the hearing, the circuit court was not required to make specific findings on every allegation in

considering best interests for purposes of child custody, and if the father wanted such findings, he could have asked for them under Ark. R. Civ. P. 52; even so, the court's oral statements showed that the court weighed the circumstances and the court stated that it had considered all the evidence. *Hortelano v. Hortelano*, 2017 Ark. App. 98, 513 S.W.3d 890 (2017).

Circuit court's award of primary custody to the wife was in the children's best interest given the testimony of the husband's erratic behavior and irregular habits, the children's reluctance and eventual refusal to attend supervised visitation with him, and the attorney ad litem's recommendation. Moreover, the circuit court witnessed first-hand the husband's erratic behavior during his testimony. *Williams v. Williams*, 2020 Ark. App. 204, 599 S.W.3d 137 (2020).

Circuit court's decision to grant custody to the wife was not clearly erroneous, as there were factors indicating joint custody was not in the child's best interest; the husband had little interaction with the child while the parties lived together, the wife was the child's primary caregiver, and the guardian ad litem was concerned that the husband was not providing sufficient support, perhaps to force the wife to return to the marriage. The child was not a pawn to be used to coerce a desired outcome. *Janjam v. Rajeshwari*, 2020 Ark. App. 448 (2020).

Conduct of Parent.

Chancellor did not find that mother was an unfit mother based solely on her homosexuality; chancellor's primary focus was on mother's conduct, not merely her status or sexual preference. *Larson v. Larson*, 50 Ark. App. 158, 902 S.W.2d 254 (1995).

Evidence concerning the moral character of a parent is relevant to the best interest of the child and the issue of parental custody. *Stone v. Steed*, 54 Ark. App. 11, 923 S.W.2d 282 (1996).

Arkansas courts have never condoned a parent's promiscuous conduct or lifestyle when conducted in the presence of the child. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Award of joint custody to parties in a divorce proceeding was clearly erroneous considering the attitudes of the parties toward each other and toward their respective roles, the fact that a basis of the

husband's request for joint custody was his concern that the wife might relocate if she had sole custody, and the parties' differing opinions as to disciplining the children. *Bailey v. Bailey*, 97 Ark. App. 96, 244 S.W.3d 712 (2006).

Where the husband was awarded temporary child custody based on an isolated incident in which the wife had an anxiety attack and threatened to kill herself and her children after she was terminated from employment, the trial court did not err by awarding the wife permanent child custody. The husband also had problems with anxiety and stress management; the wife's anxiety attack was an isolated incident; and the psychological examiners recommended that she be awarded child custody. *Rasberry v. Rasberry*, 2009 Ark. App. 594, 331 S.W.3d 231 (2009).

Trial court did not clearly err in awarding custody of divorcing parties' children to the husband based on the welfare and best interest of the children where there was evidence that the children were exposed to the wife's adulterous relationship, which was a matter of credibility for the trial court. Moreover, both parties testified that they would encourage a good relationship with the other parent, and it was a credibility determination for the trial court as to whether the husband would follow the court-ordered visitation schedule and facilitate a good relationship. *Magee v. Magee*, 2013 Ark. App. 108 (2013).

Default.

Circuit court abused its discretion by denying a mother's request to set aside the default custody award under Ark. R. Civ. P. 55(c)(4) because the need to consider the best interest of the child constituted an "other reason justifying relief". Specifically, the circuit court's primary focus was on the mother's failure to file a timely response to the complaint for divorce, rather than the best interest of the child, and nothing in the record indicated that the circuit court considered the mother's abuse allegations when evaluating her motion to set aside the default judgment. *Jones v. Jones*, 2019 Ark. App. 596, 591 S.W.3d 831 (2019).

Wife's arguments that the default divorce judgment entered against her was void, that she was entitled to a damages hearing, that the default judgment ex-

ceeded the requested relief, and that the default custody award ignored the statutory preference for joint custody were not preserved for appellate review where the wife failed to raise the specific concerns at the motion hearing below. *Glover v. Glover*, 2020 Ark. App. 89, 595 S.W.3d 54 (2020).

Domestic Violence or Abuse.

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because, without a statutory definition of "pattern of domestic abuse," the question was one of fact, not law; therefore, the appellate court was unable to say that the trial court was clearly erroneous in finding that two incidents of domestic abuse by the husband against the wife approximately seven years apart, with an intervening act of domestic abuse by the wife upon the husband, did not constitute a pattern of domestic abuse under subsection (c) of this section. *Oates v. Oates*, 2010 Ark. App. 346 (2010).

Award of custody of the parties' three sons to the husband in the parties' divorce decree was appropriate because the appellate court disagreed with the wife's contention that the trial court should have considered each allegation of abusive conduct, even if it did not amount to "domestic abuse." Subsection (c) of this section requires that a person engage in a pattern of domestic abuse; if the acts did not rise to the definition of domestic abuse, they cannot be considered for purposes of the presumption. *Oates v. Oates*, 2010 Ark. App. 346 (2010).

In denying appellant father's motion to change child custody, the trial court did not err in failing to apply the presumption in subdivisions (c)(1) and (2) of this section that it was not in the best interest of a child to remain in the custody of an abusive parent because appellee mother's poor housekeeping was not a form of domestic violence. *Loftis v. Nazario*, 2012 Ark. App. 98 (2012).

Denying the husband visitation with the couple's child was not an abuse of discretion where the circuit court was bound to consider its earlier finding of domestic abuse in determining visitation, and the testimony supported the finding that visitation was not in the child's best interest. *Goodson v. Bennett*, 2018 Ark. App. 444, 562 S.W.3d 847 (2018).

In a paternity and child custody case, the circuit court's granting of the father's motion in limine to exclude all evidence of domestic abuse was of no import where the record showed that it nevertheless considered such evidence, and given the findings and the fact that the mother's proffer was allowed and considered, there was no showing that the court did not consider the effect of domestic violence on the best interest of the children as required by subdivision (c)(1) of this section. *Szwedo v. Cyrus*, 2020 Ark. App. 319, 602 S.W.3d 759 (2020).

Evidence.

Testimony that parent had sexually abused another child was irrelevant in custody proceeding, because neither a proper link had been made connecting the allegation to the case at hand nor had a proper investigation been made into the allegations, which were denied by the parent. *Rector v. Rector*, 58 Ark. App. 132, 947 S.W.2d 389 (1997).

Trial court did not clearly err in awarding custody to the father where it was clear that the trial court determined that the best interests and welfare of the children would be served by a wholesome environment and that such an environment would exist with the father and not the mother, who had moved the children to several different states and had several different live-in boyfriends. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Order awarding custody of an illegitimate child to the child's father was proper because although the appellate court was troubled by the fact that during the pendency of the custody dispute the father was accused of raping the mother and pled guilty to falsely imprisoning the mother, the trial court's factual findings made it clear that it found the mother to be incredible. *Harmon v. Wells*, 98 Ark. App. 355, 255 S.W.3d 501 (2007).

Fault.

Fault in the divorce is not necessarily the determining factor in awarding custody since an award of custody is neither a reward nor a punishment for a parent; the children's welfare is the controlling consideration. *Burns v. Burns*, 312 Ark. 61, 847 S.W.2d 23 (1993).

Grandparents.

Where the mother's parental rights were terminated, the trial court did not abuse its discretion by denying the maternal grandparents' motion to intervene in the adoption proceedings. The maternal grandparents lost any right they had to custody and visitation of the children; this section did not apply because they were no longer grandparents. *Burt v. Ark. Dep't of Health & Human Servs.*, 99 Ark. App. 402, 261 S.W.3d 468 (2007).

The plain language of this section, read as a whole, shows an intent to allow a grandparent to intervene, and even be awarded custody, when there is an existing custody suit; it does not allow the grandparent to create the custody dispute or initiate a custody action. Therefore, a trial court did not err by dismissing a grandfather's petition for custody of his granddaughter since there was no divorce or custody dispute in which to intervene. *Pfeifer v. Deal*, 2012 Ark. App. 190 (2012).

Record was replete with evidence that would have supported a finding that appellant was unfit, given that (1) the child was made to be a part of attempts to falsely accuse a family member of sexual abuse, (2) none of the accusations, which caused the child to be examined at least three times, were substantiated, (3) although appellant's wife was alleged to have made all but the last allegation, appellant said he knew she made them and that he was the one who told her to do so, (4) there were no further abuse allegations once the child was removed from the father's custody, and (5) the father repeatedly violated a court order by not supporting the child, failing to exercise visitation, and thwarting visitation efforts by a grandmother, and yet still the trial court stopped short of making an unfit finding; the trial court erred in awarding custody to the father's mother without finding that the father was unfit, and thus the case was remanded. *Faulkner v. Faulkner*, 2013 Ark. App. 277 (2013).

Indian Child Welfare Act.

Court erred in granting custody of twins to their mother's fourth cousin instead of to her third cousin, with whom the twins had been living as it failed to comply with the placement preference in the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901-1963, and the "best inter-

est test” was to be weighed against the standard of maintaining the integrity of the Nation, its culture, its children, and its progression through time not to become extinct. *Cutright v. State*, 97 Ark. App. 70, 244 S.W.3d 702 (2006).

Joint Custody.

Although joint custody was favored in Arkansas under this section, a mother made no request for joint custody where the parties were competing for full custody, and the best interest of the child would not have been served by such an award at any rate. *Black v. Black*, 2015 Ark. App. 153, 456 S.W.3d 773 (2015).

Although the legislature amended this section to state that an award of joint custody is favored, joint custody is by no means mandatory, and custody awards are to be made solely in accordance with the welfare and best interest of the children; the trial court did not clearly err in finding that it was in the girls’ best interest to be placed in the mother’s primary custody, as she was the primary caregiver, and the trial court did not make a mistake in rejecting the father’s request for joint custody. *Fox v. Fox*, 2015 Ark. App. 367, 465 S.W.3d 18, 465 S.W.3d 18 (2015).

“Favored” status of joint custody specifically applies in divorce cases rather than custody cases involving children born to unmarried parents but § 9-10-109 expressly provides that, once paternity has been established, the court is ordered to follow “the same guidelines, procedures, and requirements ... as if it were a case involving a child born of a marriage in awarding custody [and] visitation.” Accordingly, in a case concerning custody of a child born to unmarried parents, the circuit court did not err in recognizing that joint custody is “favored” under this section. *Ryan v. White*, 2015 Ark. App. 494, 471 S.W.3d 243 (2015).

Award of joint custody was upheld, despite the concerns of a mother, because a father presented evidence that contradicted or explained each of her concerns; although the father had made mistakes in the past, he testified that his priorities had changed since the birth of his child. Awards of joint custody are favored under this section, and the circuit court noted its concern about the mother’s anger and found that the father would better ensure frequent and continuing contact between

the child and the mother. *Montemayor v. Rosen*, 2015 Ark. App. 597, 474 S.W.3d 114 (2015).

Circuit court did not err in entering a final modification order awarding true joint custody with the time to be equally split between the parents because the father had not abandoned the marital home, the children did not spend the majority of their time with the mother, material changes of circumstance had occurred, the parties could work together, and the children needed stability in their lives. *Neumann v. Smith*, 2016 Ark. App. 14, 480 S.W.3d 197 (2016).

Trial court erred when it modified a previous custody decision and awarded the parties joint legal custody, even though a material change in circumstances had occurred, because the parents were unable to agree on anything or cooperate. *Stibich v. Stibich*, 2016 Ark. App. 251, 491 S.W.3d 475 (2016).

Circuit court improperly granted a father’s petition to modify custody because its finding that joint custody was in the children’s best interest was clearly erroneous; the circuit court’s oral findings on the cooperation in the parties’ relationship contradicted its oral and written finding that joint custody was in the children’s best interest where the former detailed how cooperation between the parties was utterly lacking. *Hongyang Li v. Yi Ding*, 2017 Ark. App. 244, 519 S.W.3d 738 (2017).

Circuit court clearly considered awarding joint custody under this section, but the mother’s own unwillingness to consider joint custody was a contributing factor to the circuit court’s decision not to award joint custody, and a party could not complain of an alleged erroneous action of the circuit court if the party induced such action. *Wilhelm v. Wilhelm*, 2018 Ark. App. 47, 539 S.W.3d 619 (2018).

Trial court did not clearly err in awarding joint custody to the mother and father; the trial court properly considered the possibility that the mother might move to Ohio in making its custody decision, the trial court was not bound by the guardian ad litem’s recommendation, and while the mother alleged that the father was inattentive when she filed the emergency petition for primary custody, the trial court had concluded that her proof was insuffi-

cient. *Williams v. Williams*, 2019 Ark. App. 186, 575 S.W.3d 156 (2019).

Trial court did not err in denying the father's request for joint custody; although both the mother and the father were good parents who loved their son, the level of cooperation and communication that was required for joint custody was lacking, as the trial court found, *inter alia*, that the parents failed to communicate and cooperate regarding the child's refusal to eat at the mother's home, that they could not agree on overnight visitation for the father until attorneys were involved, and that they had not agreed on extracurricular activities. *Carrillo v. Ibarra*, 2019 Ark. App. 189, 575 S.W.3d 151 (2019).

Circuit court did not clearly err in finding that joint custody was in the children's best interest, where the appellant testified that the parties had raised the children as a team, she had agreed when the parties separated to joint custody with equal time, and credibility determinations are for the circuit court. *Grimsley v. Drewyor*, 2019 Ark. App. 218, 575 S.W.3d 636 (2019).

Trial court's award of joint child custody was not inconsistent with the court's grant of a divorce on general indignities grounds because different considerations were required to make general-indignities and joint-custody findings. *Cunningham v. Cunningham*, 2019 Ark. App. 416, 588 S.W.3d 38 (2019).

Joint custody award upheld despite the mother's argument that the parties were unable to cooperate and communicate effectively; most joint-custody situations involve some amount of disagreement, the circuit court carefully considered all the evidence and found that joint custody would maximize the child's time with both parents and reduce the number of custody exchanges, which was the source of a significant amount of the conflict between the parties, and the appellate court recognized the circuit court's superior position to evaluate the witnesses and the child's best interest. *Cunningham v. Cunningham*, 2019 Ark. App. 416, 588 S.W.3d 38 (2019).

There was no clear error in the circuit court's decision to maintain a joint-custody arrangement as the child was a happy, healthy, intelligent child, and there was nothing in the record that demon-

strated that parental discord had affected the child's health and welfare. *Pace v. Pace*, 2020 Ark. 108, 595 S.W.3d 347 (2020).

Circuit court did not err in modifying joint custody to award the mother sole custody, because (1) despite a statutory preference for joint custody, evidence of the parties' level of discord and lack of cooperation, resulting in a no-contact order, was a material change in circumstances, and (2) the father's tumultuous remarriage and anger issues showed that awarding custody to the mother was in the children's best interest. *Roberts v. Roberts*, 2020 Ark. App. 60, 595 S.W.3d 15 (2020).

Trial court did not abuse its discretion by denying the wife's motion for a new trial because the husband offered several documents verifying an agreement between the parties entered into prior to the divorce trial, including a quitclaim deed and signed, notarized statements wherein they agreed to share joint custody of the children; further, joint custody is favored in Arkansas. *Elder v. Elder*, 2020 Ark. App. 283 (2020).

Keeping Siblings Together.

Although the value of keeping siblings together is a factor in determining what is in a child's best interest, the awarding of child custody based solely on the presumption that siblings should be kept together is contrary to this section. *Atkinson v. Atkinson*, 72 Ark. App. 15, 32 S.W.3d 41 (2000).

Trial court's decision divesting custody of two children from their parents and awarding custody to their maternal grandparents was clearly erroneous as evidence that the children had sustained various injuries and illnesses while in their father's care did not support a finding that he was an unfit parent, and the children had a half-brother (the father's child with his current wife) with whom they shared a significant family relationship. *Dunham v. Doyle*, 84 Ark. App. 36, 129 S.W.3d 304 (2003).

Modification.

The party desiring to change the custody of a child whose custody has been judicially determined in a divorce decree, must show altered conditions affecting the welfare of the child or that material facts

as to the situation were not made known to the court in the original proceedings. *Marr v. Marr*, 213 Ark. 117, 209 S.W.2d 456 (1948).

Conditions found to have altered the circumstances under which the original custody decree was entered to such an extent as to warrant a change of custody to benefit the children. *Powell v. Woolfolk*, 233 Ark. 893, 349 S.W.2d 657 (1961).

A judicial award of custody would not be modified unless it was shown that there were changed conditions which demonstrated that a modification of the decree was to the best interest of the children. *Feight v. Feight*, 253 Ark. 950, 490 S.W.2d 140 (1973).

In proceedings to modify order for custody of children, violation of court orders or contempt of court is a factor to be taken into consideration by the court in the exercise of its discretion to grant or deny a modification of custody orders but is not so conclusive as to require the court to act contrary to the best welfare of the child. *Johnson v. Arledge*, 258 Ark. 608, 527 S.W.2d 917 (1975).

A judicial award of custody should not be modified unless it is shown that there are changed conditions which demonstrate that a modification of the decree is in the best interest of the child, or when there is a showing of facts affecting the best interest of the child that were either not presented or were not known by the chancellor at the time the original custody order was entered. *Stamps v. Rawlins*, 297 Ark. 370, 761 S.W.2d 933 (1988).

The polestar in making a relocation determination is the best interest of the child and the trial court should take into consideration the following matters: (1) the reason for the relocation; (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and children will relocate; (3) visitation and communication schedule for the noncustodial parent; (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate, as well as Arkansas; and (5) preference of the child, including the age, maturity, and the reasons given by the child as to his or her preference. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Relocation alone is not a material change in circumstance, and a presumption exists in favor of relocation for custodial parents with primary custody; the noncustodial parent should have the burden to rebut the relocation presumption, and the custodial parent no longer has the obligation to prove a real advantage to herself or himself and to the children in relocating. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Custody changed from mother to father in a modification action brought a year after the divorce where the mother's situation had radically improved, even though the father's situation had not substantially changed since the divorce. *Mason v. Mason*, 82 Ark. App. 133, 111 S.W.3d 855 (2003).

For a change of custody, the chancellor must first determine that a material change in circumstances has occurred since the last order of custody; if that threshold requirement is met, the chancellor must then determine who should have custody with the sole consideration being the best interest of the children. *Tipton v. Aaron*, 87 Ark. App. 1, 185 S.W.3d 142 (2004) (decided under prior law).

Joint custody or equally divided custody of minor children is not favored in Arkansas, and when the parties have fallen into such discord that they are unable to cooperate in sharing the physical care of the children, this constitutes a material change in circumstances affecting the children's best interest. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004) (decided under prior law).

Because the trial court erred in labeling a change of custody in favor of the father temporary in nature, a subsequent change of custody decision for the mother was reversed and remanded because the material change in circumstances standard should have been used; this applied to every custody determination after an initial award in favor of the mother. *Hodge v. Hodge*, 97 Ark. App. 217, 245 S.W.3d 695 (2006).

Where a mother made unsubstantiated sexual abuse allegations, a trial court did not err by awarding custody to a father in a family-in-need-of-services case under § 9-27-338, because it was not in the child's best interest to return to the mother where the child was doing better

while not in her custody; moreover, the father did not have to show a material change in circumstances since this was not a regular custody proceeding. *Judkins v. Duvall*, 97 Ark. App. 260, 248 S.W.3d 492 (2007), overruled in part, *Mahone v. Ark. Dep't of Human Servs.*, 2011 Ark. 370, 383 S.W.3d 854 (2011).

Even recognizing a father's bad conduct in creating trouble concerning the interrelationships among himself, the child, and the child's mother, the court could not overlook the evidence that was before the trial court and could not conclude that it rose to the level that would constitute a change of circumstances, especially in light of a doctor's testimony that a reduction in visitation would not be beneficial to the child. *Williams v. Ramsey*, 101 Ark. App. 61, 270 S.W.3d 345 (2007).

Substantial evidence supported findings that a father, in contravention of court orders, continued to refer to his current wife as the child's "Mommy" and that he failed to give the child her medication. The evidence established that the father willfully and intentionally violated prior court orders and supported the trial court's holding him in contempt. *Williams v. Ramsey*, 101 Ark. App. 61, 270 S.W.3d 345 (2007).

Where the parties could no longer make joint decisions relating to the child, they lived in different counties, and the mother had neglected the child's medical needs, the trial court clearly erred in finding that the father failed to establish a material change in circumstances to justify a change of child custody. Because joint custody had previously been awarded and the mother had never been awarded primary custody, it was an erroneous application of the facts to find that the child should remain with her; the trial court erroneously gave a preference to the mother in its analysis, which was contrary to subdivision (a)(1)(A)(i) of this section. *Jones v. Jones*, 2009 Ark. App. 571 (2009).

Trial court did not err in granting a mother's motion for a directed verdict and in denying a father's petition to change primary custody of his child because the father did not make a prima facie case of a material change of circumstances; the child was situated in the same home and school and was doing "better" in that setting than he was at the time a previous custody order was entered, and the fa-

ther's accusations that the child's personal hygiene was being neglected did not constitute a material change of circumstances. *Lawhead v. Harris*, 2010 Ark. App. 77, 374 S.W.3d 71 (2010).

Circuit court did not err in determining that there had been a material change of circumstances and that it was in the best interest of the children to award custody to a father because the children had extremely poor academic performance, were failing, and had behavioral problems at school, that there was little hope for improvement in their after-school care situation, and that the father's efforts to deal with the children's "dismal performance" offered hope for academic and behavioral improvement; the circuit court did not clearly err in finding that the mother had moved to another state without asking for modification to visitation and that the purpose of her move was to frustrate the father's visitation. *Harris v. Harris*, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Although the trial court clearly did not approve of a mother's adulterous conduct both before and after a divorce, proof of that conduct alone did not require a change in custody to the father where the trial court concluded that the interests of the children were better served by leaving primary custody with the mother. *Valentine v. Valentine*, 2010 Ark. App. 259, 377 S.W.3d 387 (2010).

Finding that there was a change in circumstances sufficient to modify a custody order was not clearly erroneous, as testimony showed that a mother allowed various men to stay overnight in the mother's home and also allowed one man to live there full-time in the presence of the mother's children; testimony showed that the father's household was stable. *Shannon v. McJunkins*, 2010 Ark. App. 440, 376 S.W.3d 489 (2010).

Because the circuit court was never made aware, prior to a hearing on a father's change-of-custody motion, of the substantial amount of time a child was spending at the maternal grandparents' house or the issues regarding the father's visitation, the evidence supported a finding of a material change in circumstances; therefore, the circuit court did not err in finding that changing custody of the child from the mother to the father was in the child's best interest. *Chaffin v. Chaffin*, 2011 Ark. App. 293 (2011).

Because a mother presented evidence that the father was effecting an alienation of her parental rights based on his erroneous interpretation of the visitation guidelines, the circuit court erred by failing to view the evidence in a light most favorable to the mother and by exercising its fact-finding powers. *Wagner v. Wagner*, 2011 Ark. App. 475 (2011).

In reading the order's plain language, the trial court found that a material change of circumstance had not occurred for modification of custody purposes; if the father had specific findings he wanted the trial court to make, he could have requested them, but as the record stood, he did not offer a reason to reverse the order. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

There was ample factual support in the record for the trial court to reject the father's change-of-custody and modification argument; while the parental tension was apparently significant, it did not, in the trial court's view, create a material change in circumstance finding, and the decision not to modify custody was affirmed. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

Even if it was assumed that the trial court found a material change of circumstance, the order could be reasonably read to determine that the trial court did not modify custody to the father because it found that it was in the child's best interest to remain in her mother's custody, and the trial court did not improperly apply the law just because its order recited an alternative basis to support the ultimate ruling. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

To the extent that the father argued the order was to be reversed or scrutinized differently because the trial court in this case had a history of misapplying the law in custody cases, the argument was rejected; there was no evidence supporting the father's claim that the trial court imposed a heightened burden in this custody modification case. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

Father claimed the mother's remarriage and alleged favoring of her new baby constituted a material change in circumstances supporting modification, but remarriage alone was not a sufficient reason to change custody, there was testimony

that the mother had been reassuring to the child, and while her discipline techniques might not have been the best, they were not done abusively, and on the disputed record, these findings were not clearly erroneous. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

Father claimed the mother's behavior in making disparaging remarks and keeping the child from him constituted a material change in circumstances supporting modification, but there was testimony that the mother's actions did not rise to the level of alienation and both parties acted disrespectfully, and the trial court ordered that a calendar be used and the parties communicate directly, and the findings in this regard were not clearly erroneous. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

Counseling was ordered to continue, and the trial court's decision not to use the drastic measure of a change and modification of custody because the mother dropped out of therapy was not clearly erroneous; violating a court's order did not, in and of itself, compel a change of custody. *Baker v. Murray*, 2014 Ark. App. 243, 434 S.W.3d 409 (2014).

Natural-Parent Preference.

A court may award split or full custody of a child to a stepparent, but the preference for awarding custody to a natural parent must prevail unless it is established that the natural parent is unfit. *Stamps v. Rawlins*, 297 Ark. 370, 761 S.W.2d 933 (1988).

This case did not fit one of the narrow exceptions to the parental preference rule; it was an initial award of custody involving a biological father who did not abandon the child for a substantial period of time, and thus the trial court erred in awarding custody of the child to the father's mother absent a finding that the father was unfit. *Faulkner v. Faulkner*, 2013 Ark. App. 277 (2013).

Parental Visitation Rights.

Since this subchapter does not give a county chancery court jurisdiction to address the issue of visitation, collateral matters such as visitation cannot be raised as a defense. *State, Jefferson County Child Support Enforcement Unit v. Robinson*, 311 Ark. 133, 842 S.W.2d 47 (1992).

Under this subchapter, a state court could not directly determine visitation; it also could not indirectly determine visitation by making payment of child support dependent upon visitation. *State, Jefferson County Child Support Enforcement Unit v. Robinson*, 311 Ark. 133, 842 S.W.2d 47 (1992).

A chancery court has the power to use its contempt power to enforce its order awarding visitation to a stepparent in the context of a divorce decree. *Young v. Smith*, 331 Ark. 525, 964 S.W.2d 784 (1998).

The parties' past problems with visitation alone were not dispositive of the questions of the integrity of the mother's motives for seeking the move to Texas, or the likelihood of her compliance with visitation orders in the future. *Friedrich v. Bevis*, 69 Ark. App. 56, 9 S.W.3d 556 (2000).

The trial court should have applied the factors to be considered when a custodial parent seeks to move with the parties' children to a place so geographically distant as to render weekly visitation impossible and impractical, and required mother to bear one-half the transportation costs where her new job resulted in a substantial raise in pay, and her move to Texas was wholly voluntary. *Friedrich v. Bevis*, 69 Ark. App. 56, 9 S.W.3d 556 (2000).

This section does not confer jurisdiction on the trial court to terminate parental rights. The statute deals with child custody and visitation issues and does not address the termination of parental rights. *Hudson v. Kyle*, 352 Ark. 346, 101 S.W.3d 202 (2003).

Trial court did not clearly err in structuring a specific visitation schedule regarding the mother's and the father's son after it granted relocation to the mother, who moved to Virginia because her husband had obtained new employment in that state; while the visitation order provided for the son to spend virtually every holiday with the father, each spring break, and one weekend each month in which there was no holiday or other school vacation, the order also provided that the son spend all remaining time at the mother's household. *Rebsamen v. Rebsamen*, 82 Ark. App. 329, 107 S.W.3d 871 (2003).

Modification of father's visitation rights was warranted where elimination of daily

visits would lessen the need for contact between the parties; the social worker testified that the animosity between the father and mother caused the children a great deal of stress and some type of modification would be in the best interest of the children, and that it was necessary to keep the parties on neutral territory during pick up and drop off. *Meins v. Meins*, 93 Ark. App. 292, 218 S.W.3d 366 (2005).

Although a mother's continued alienation of a father from the parties' son warranted a change in custody, supervised visitation for the mother was not warranted when nothing in the psychologist's report indicated that the mother had mental-health issues that rendered her incapable of caring for the son during visitation and none of the evidence revealed that the mother had mistreated the son or neglected the son's needs during the time the son was in the mother's care. *Sharp v. Keeler*, 99 Ark. App. 42, 256 S.W.3d 528 (2007).

Marriage of the biological parents of a child, who was born while the mother was married to her ex-husband, was not a change of circumstances that warranted terminating the ex-husband's visitation rights which were granted to him in a divorce decree; moreover, it would not have been in the child's best interests to do so because the child had known the ex-husband as his father his entire life and had enjoyed visitation with him since his mother had divorced, and his older brother, whom he had known since birth and with whom he had a good relationship, lived with the ex-husband and the record indicates that the brother was not welcome in the biological parents' home and, therefore, terminating the ex-husband's visitation would also disallow the child the opportunity to maintain his relationship with his brother. *Hunter v. Haunert*, 101 Ark. App. 93, 270 S.W.3d 339 (2007).

Father's argument that a trial court erroneously refused to enforce visitation was rejected because, not only did the father fail to object to the visitation arrangement set out by the trial court, he suggested it in the first place. The father stated he did not want to force his children to enter into a relationship with him, but he also did not want them prevented from contacting him if they so desired.

Norman v. Cooper, 101 Ark. App. 446, 278 S.W.3d 569 (2008).

Pursuant to this section, denial of altered visitation, based on the child's best interests, was proper because the child's mother had moved only about an hour's drive away, and the father still enjoyed visitation for at least part of every week-end. Lee v. Eubanks, 2009 Ark. App. 838 (2009).

Circuit court did not limit a father's visitation as punishment for contempt; the circuit court limited visitation under its continuing authority to modify visitation, at the request of the mother, and the father's disregard for the orders of the circuit court and disdain in his conduct for the mother, in the presence of the parties' children, sufficiently supported the necessary finding of a material change in circumstances to modify visitation. Goodman v. Goodman, 2019 Ark. App. 75 (2019).

Preference of Child.

Trial court properly granted a father's motion to change custody on the ground that a change of circumstances had occurred because the children expressed a strong, well-reasoned preference to return to Arkansas and their father's custody; the children did not oppose a short-term move to Missouri for their stepfather's career, but did not want to move to Wisconsin indefinitely. Myers v. McCall, 2009 Ark. App. 541, 334 S.W.3d 878 (2009).

Trial court did not err in denying a father's motion to modify custody because there was no reversible error in the trial court's finding that a daughter was not of a sufficient age and capacity to reason that the trial court could consider her preference as to custody; the trial court was in a better position than the Court of Appeals to judge the credibility of the witnesses, including the daughter. Stacks v. Stacks, 2009 Ark. App. 862, 377 S.W.3d 265 (2009).

Trial court did not err in denying a father's motion to modify custody because its finding that a daughter had not expressed a preference as to custody was not clearly erroneous when the trial court was faced with conflicting testimony, with the father testifying that the children wanted to live with him, the mother disputing that contention, and the daughter testifying that she did not want to hurt anyone's

feelings and not expressing a clear preference; the daughter's preference alone was not determinative of which parent would have custody. Stacks v. Stacks, 2009 Ark. App. 862, 377 S.W.3d 265 (2009).

Circuit court did not err in awarding joint legal custody of the male child to the mother and the father and in awarding primary physical custody of the child to the father because the child was doing significantly better, both behaviorally and gradewise, in his father's custody; although the father's living arrangements were far from ideal, he testified — apparently, to the circuit court, credibly — that he would soon be approved for a more appropriate home; and the child testified that he was happier with his father, and the circuit court could take that desire into consideration. Jackson v. Littleton, 2018 Ark. App. 511, 561 S.W.3d 352 (2018).

Circuit court's consideration of the children's wishes concerning custody is not required, but permissive (two children testified that they wanted to live with their father, while one child testified that she wanted to remain with her mother). Cordell v. Cordell, 2018 Ark. App. 521, 565 S.W.3d 500 (2018).

Circuit court did not abuse its discretion in failing to modify custody based on a child's stated preference; to the extent that the father's argument that the circuit court erred in denying the child's clear desire to live with him referenced the absence of a report of recommendation from the ad litem, the father did not expound on the argument in his brief, failing to even mention it in his argument. Goodman v. Goodman, 2019 Ark. App. 75 (2019).

Presumptions.

Where it was clear from chancellor's remarks that his general view that young girls should be raised by their mothers was given the force of a presumption in deciding custody issue, grant of custody to mother was reversed and remanded. Fox v. Fox, 31 Ark. App. 122, 788 S.W.2d 743 (1990).

Fact that the father had remarried and had a new child did not equate to a change of circumstances, especially where the half-siblings never lived together, and even though the mother's request to relocate to a neighboring state was primarily

for personal reasons, the trial court improperly failed to apply the presumption in favor of a custodial parent's relocation in granting father's petition for a change of custody. *Middleton v. Middleton*, 83 Ark. App. 7, 113 S.W.3d 625 (2003).

In a custody modification case, the court erred by applying the wrong standard where it believed that the natural-parent preference was binding and that it could not deviate from it because determining whether the child was to be better off with one party versus another was precisely what the trial court should have decided; the natural-parent preference and the fitness of that parent were not the absolute determinants in custody-modification matters. *Crosser v. Henson*, 357 Ark. 635, 187 S.W.3d 848 (2004).

In light of the presumption in favor of relocation and the fact that relocation alone was not a material change in circumstances, the trial court erred in determining the custody issue between the father and mother without addressing the relocation factors; thus, the matter was remanded for the trial court to decide the custody issue in conjunction with those factors. *Jowers v. Jowers*, 92 Ark. App. 374, 214 S.W.3d 294 (2005).

Although a settlement agreement attempted to shift the burden of proving that relocation was in the best interests of the children to the mother as custodial parent, the mother could not legally waive the *Hollandsworth* presumption, favoring preserving the custodial relationship in spite of relocation, and, thus, the father had the burden of proving that relocation was not in the best interests of the children. *Stills v. Stills*, 2010 Ark. 132, 361 S.W.3d 823 (2010).

Judgment awarding custody of the parties' son to the husband was affirmed where (1) there was evidence that the husband was quite capable of being the primary caregiver, as he had been able to handle all aspects of the child's daily routine, including cooking the meals and helping with homework; and (2) although the trial court commented that the child was at a time in his life where it would be a good time to be with his dad, the instant court did not think that this evidenced a bias in favor of the husband. *Wise v. Wise*, 2010 Ark. App. 184, 374 S.W.3d 704 (2010).

Father suggested that he was at a disadvantage because he would likely have to relocate to secure employment, and that an award of joint custody would facilitate his ability to relocate the children, but even if joint custody were awarded, the presumption in favor of the relocation of a primary custodian was inapplicable when parents shared joint custody. *Fox v. Fox*, 2015 Ark. App. 367, 465 S.W.3d 18, 465 S.W.3d 18 (2015).

Racial Bias.

In a child custody case, where the mother lived in an interracial household, the trial court used private racial biases as an impermissible basis for awarding child custody to the father; private racial biases and the possible injury that they might inflict are not permissible considerations for the removal of a child from the custody of its natural mother. *Tipton v. Aaron*, 87 Ark. App. 1, 185 S.W.3d 142 (2004).

Remarriage.

Where, at the time of the original divorce decree, the father knew he was likely to remarry, and voluntarily entered into the agreement to award custody of the child to the mother, the father's remarriage did not constitute a material change in circumstances; the father cannot use the circumstances he created as grounds to modify custody. *Jones v. Jones*, 326 Ark. 481, 931 S.W.2d 767 (1996).

Specific Findings.

Nothing in the statute requires the circuit court to make specific findings as to every factor that leads to the court's best-interest determination, and the mere fact that the court in this case did not mention these other factors in its opinion or decree did not necessarily mean the trial court did not consider them. *Woods v. Woods*, 2013 Ark. App. 448 (2013).

Standard of Review.

Appellate court reviews child custody modification cases *de novo* and reverses only when the trial court's findings are clearly erroneous. *Dansby v. Dansby*, 87 Ark. App. 156, 189 S.W.3d 473 (2004).

Unmarried Cohabitation.

Trial court erred in refusing to allow a 12-year-old boy to have overnight visitation with his father based solely on the policy of prohibition on unmarried cohabi-

tation with a romantic partner, based on the father's seven-year cohabiting relationship with another man, without considering whether such a prohibition was in the best interest of the child. *Moix v. Moix*, 2013 Ark. 478, 430 S.W.3d 680 (2013).

Cited: *Kimmons v. Kimmons*, 1 Ark. App. 63, 613 S.W.2d 110 (1981); *Wing v. Wing*, 12 Ark. App. 84, 671 S.W.2d 204

(1984); *Golden v. Golden*, 57 Ark. App. 143, 942 S.W.2d 282 (1997); *Office of Child Support Enforcement v. Lawrence*, 57 Ark. App. 300, 944 S.W.2d 566 (1997); *Gammill v. Hoover*, 2011 Ark. App. 788 (2011); *Dorrell v. Dorrell*, 2014 Ark. App. 496, 441 S.W.3d 925 (2014); *Troesken v. Herrington* (In re S.H.), 2015 Ark. 75, 455 S.W.3d 313 (2015).

9-13-102. Visitation rights of brothers and sisters.

The circuit courts of this state, upon petition from any person who is a brother or sister, regardless of the degree of blood relationship or, if the person is a minor, upon petition by a parent, guardian, or next friend in behalf of the minor, may grant reasonable visitation rights to the petitioner so as to allow the petitioner the right to visit any brother or sister, regardless of the degree of blood relationship, whose parents have denied such access. The circuit courts may issue any further order that may be necessary to enforce the visitation rights.

History. Acts 1981, No. 920, § 1; A.S.A. 1947, § 57-137.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 4 U. Ark. Little Rock L.J. 595.

CASE NOTES

In General.

Father, during visitation periods with his daughter, had the right to decide what was in her best interest, including visitation between and among his daughters, in his own home, without being physically present; however, the trial court clouded

the issue of parental visitation rights by ordering concurrent sibling visitation rights under this section, and that part of the order was reversed. *Medlin v. Weiss*, 356 Ark. 588, 158 S.W.3d 140 (2004).

Cited: *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

9-13-103. Visitation rights of grandparents when child is in custody of parent — Definitions.

(a) For the purposes of this section:

(1) "Child" means a minor under eighteen (18) years of age of whom the custodian has control and who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

(2) "Counseling" means individual counseling, group counseling, or other intervention method;

(3) "Custodian" means the custodial parent of the child with the authority to grant or deny grandparental visitation;

(4) "Mediation service" means any formal or informal mediation; and

(5) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition a circuit court of this state for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if:

(1) The marital relationship between the parents of the child has been severed by death, divorce, or legal separation;

(2) The child is illegitimate and the petitioner is a maternal grandparent or great-grandparent of the illegitimate child;

(3) The child is illegitimate, the petitioner is a paternal grandparent or great-grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction;

(4) The court finds by clear and convincing evidence that the primary custodian of the child is unfit;

(5)(A) The court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the best interest of the child.

(B) In determining the best interest of the child, the court may consider one (1) or more of the following factors:

(i) The love, affection, and other emotional ties that exist between the petitioner and the child;

(ii) The length and quality of the relationship between the petitioner and the child;

(iii) The mental and physical health of the petitioner, the parent, and the child;

(iv) The potential detriments and benefits to the child if visitation is granted or denied;

(v) The wishes and preferences of the child as to visitation;

(vi) The motivation of the parent in denying or prohibiting visitation between the petitioner and the child;

(vii) The motivation of the grandparent or great-grandparent in petitioning for visitation with child;

(viii) Any history of abuse or neglect of the child;

(ix) Any history of domestic violence in the home of the child;

(x) Whether there has been a court-ordered termination of the parental rights of a parent to whom the petitioner is related; and

(xi) Any other factor that impacts the best interest of the child; or

(6) A stepparent of either biological parent of the child adopts the child due to the death of the biological parent of the child.

(c)(1) There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the petitioner is in the best interest of the child.

(2) To rebut the presumption, the petitioner shall prove by a preponderance of the evidence the following:

(A) The petitioner has established a significant and viable relationship with the child for whom he or she is requesting visitation; and

(B) Visitation with the petitioner is in the best interest of the child.

(d) To establish a significant and viable relationship with the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The child resided with the petitioner for at least six (6) consecutive months with or without the current custodian present;

(2) The petitioner was the caregiver to the child on a regular basis for at least six (6) consecutive months;

(3) The petitioner had frequent or regular contact with the child for at least twelve (12) consecutive months; or

(4) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

(e) To establish that visitation with the petitioner is in the best interest of the child, the petitioner shall prove by a preponderance of the evidence the following:

(1) The petitioner has the capacity to give the child love, affection, emotional support, and guidance;

(2) The loss of the relationship between the petitioner and the child is likely to:

(A) Harm the child;

(B) Cause emotional distress to the child;

(C) Result in the emotional abuse of the child; or

(D) Result in the emotional neglect of the child;

(3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed; and

(4) Awarding grandparent visitation would not interfere with the parent-child relationship.

(f)(1) An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation under this section.

(2)(A) If the court grants visitation to the petitioner or petitioners, the visits may occur without regard to which parent has physical custody of the child.

(B) Visits with a paternal grandparent or great-grandparent may occur even when the child is in the custody of the mother, and visits with a maternal grandparent or great-grandparent may occur even when the child is in the custody of the father.

(3)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

(4) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(5) After an order granting or denying visitation has been entered under this section, the custodian or petitioner may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

(g)(1) A court may order mediation services to resolve a visitation issue under this section if:

(A) Mediation services are available;

(B) Both parties agree to participate in mediation services; and

(C) One (1) or both of the parties agree to pay for mediation services.

(2) Records, notes, reports, or discussions related to the mediation service shall not be used by the court to determine visitation under this section.

(h)(1) A court may order counseling to address underlying matters surrounding the visitation issue under this section if:

(A) Counseling is available;

(B) Both parties agree to participate in counseling; and

(C) One (1) or both of the parties agree to pay for counseling.

(2) Records, notes, reports, or discussions related to the counseling shall not be used by the court to determine visitation under this section.

(i) This section does not apply to dependency-neglect proceedings conducted under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

History. Acts 1985, No. 403, §§ 1, 3; A.S.A. 1947, §§ 34-1211.2, 34-1211.3; Acts 1987, No. 17, § 1; 1993, No. 1231, § 1; 1995, No. 1200, § 1; 2003, No. 652, § 1; 2009, No. 271, § 1; 2019, No. 679, §§ 3, 4.

A.C.R.C. Notes. Acts 2019, No. 679, § 1, provided: "Title. This act shall be known and may be cited as 'Tara's Law'."

Acts 2019, No. 679, § 2, provided: "Legislative intent. The General Assembly recognizes:

"(1) The importance of family and the fundamental rights of parents;

"(2) That a fit parent's decision regarding whether or not to permit grandparental visitation is entitled to special weight due to a parent's fundamental right to

make decisions concerning the rearing of his or her child; and

"(3) That grandparental relationship should be supported following a consideration of the potential harm, emotional neglect, and emotional abuse of a child caused by the parent's limitation or termination of the child's prior relationship with his or her grandparent while recognizing the parent's fundamental right."

Amendments. The 2019 amendment inserted "or great-grandparent" in (b)(2) and (b)(3); added (b)(4) through (b)(6); inserted "emotional support" in (e)(1); added (e)(2)(B) through (e)(2)(D), and (e)(4); added (i); and made stylistic changes.

RESEARCH REFERENCES

ALR. Validity of Grandparent Visitation Statutes. 86 A.L.R.6th 1.

Ark. L. Rev. Brummer and Looney, Grandparent Rights in Custody, Adoption,

and Visitation Cases, 39 Ark. L. Rev. 259.

Note, Is Arkansas's Grandparent Visitation Statute Constitutional Under the Standards Articulated By the Arkansas Supreme Court in *Linder v. Linder?*, 58 Ark. L. Rev. 197.

Recent Developments: Visitation Rights of Natural Grandparents Do Not Survive the Adoption of Their Own Adult Children, 66 Ark. L. Rev. 601 (2013).

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

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Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 25 U. Ark. Little Rock L. Rev. 988, 992.

Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Grandparents' Visitation Rights, 26 U. Ark. Little Rock L. Rev. 411.

CASE NOTES

ANALYSIS

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Constitutionality.

Failure to allow grandparents who had visitation rights to intervene in adoption proceedings was inconsistent with their due process right to be heard, since the adoption court could extinguish the visitation rights given by the chancery court. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981) (decision under prior law).

Adoption statutes did not deprive grandparents of rights to grandchildren without showing a compelling state interest, or deprive them of due process, since they did not demonstrate any constitutionally protected right or interest. *Cox v. Stayton*, 273 Ark. 298, 619 S.W.2d 617 (1981) (decision under prior law).

This section held constitutional. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

This section was unconstitutional as applied, and violated the mother's funda-

mental liberty interest under the due process clause of the U.S. Const. Amend. 14 § 1; so long as the mother was fit to care for the child, the Fourteenth Amendment right attached, and the state could not interfere without a compelling interest to do so. *Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002).

This section does not unconstitutionally discriminate between married and divorced parents. *Seagrave v. Price*, 349 Ark. 433, 79 S.W.3d 339 (2002).

Grandparent visitation statute was unconstitutional as applied in a case where the trial court made no reference in its findings as to the mother's fitness as custodial parent, and failed to give her the presumption to which she was entitled regarding her opinions with respect to rearing her child. *Seagrave v. Price*, 349 Ark. 433, 79 S.W.3d 339 (2002).

In a father's action to terminate the maternal grandmother's visitation with his children, where he had failed to appeal a prior ruling that the Arkansas Grandparent Visitation Act was constitutional, *res judicata* precluded him from relitigating this issue because the same parties and issue had been involved in the prior action. *Hunt v. Perry*, 355 Ark. 303, 138 S.W.3d 656 (2003), cert. denied, 541 U.S. 1074, 124 S. Ct. 2428, 158 L. Ed. 2d 984 (2004).

Where the mother neither presented the trial court with the issue of the constitutionality of Acts 2003, No. 652, nor did she obtain a ruling on the issue, the Arkansas Supreme Court declined to review the constitutionality of the grandparents visitation law. *Gwin v. Daniels*, 357 Ark. 623, 184 S.W.3d 28 (2004).

In General.

Under the language of this section, grandparents are afforded the separate right to file for visitation rights with their grandchildren in situations where the child's parents are divorced, legally separated, or when a parent has died. This section contains no restrictive language that would require grandparents to file their visitation action in a divorce action filed previously by the child's parents. In fact, § 9-12-320, the venue statute concerning subsequent proceedings in divorce actions, would be wholly inapplicable where the grandparents' action is precipitated because their son or daughter died and the surviving, but not divorced, parent denied them access to their grandchild. *Sanders v. Sanders*, 297 Ark. 621, 764 S.W.2d 443 (1989).

A grandparent has standing to seek visitation where the marital relationship of the parents of the child has been severed without regard to which parent has custody of the child; the statute does not exclude the parents of the parent with custody from standing to seek visitation. *Boothe v. Boothe*, 341 Ark. 381, 17 S.W.3d 464 (2000).

In a father's action to terminate the maternal grandmother's visitation with his children, where the trial court ruled that it was not possible to determine whether the children's behavioral problems stemmed from their visitation with the grandmother or the blending of the families of the father and his current wife, and this finding was supported by the evidence, it was not disturbed on appeal. *Hunt v. Perry*, 355 Ark. 303, 138 S.W.3d 656 (2003), cert. denied, 541 U.S. 1074, 124 S. Ct. 2428, 158 L. Ed. 2d 984 (2004).

Where a person stands in loco parentis to a child, rather than a person or persons who simply have a relationship with the child, the finding of an in loco parentis relationship is different from the grandparent relationships found in prior Arkansas precedent because it concerns a person who in all practical respects is a parent; further, the status of in loco parentis permits, where circumstances warrant, that a stepparent be granted visitation with a stepchild after a divorce. *Robinson v. Ford-Robinson*, 88 Ark. App. 151, 196 S.W.3d 503 (2004), aff'd, 362 Ark. 232, 208 S.W.3d 140 (2005).

Order granting grandparents visitation with their grandchild was upheld where the trial court's findings made pursuant to this section were supported by the evidence; the trial court accepted the grandparents at their word when they testified that they would cooperate with the mother if visitation was allowed. The grandparents shared a close and bonded relationship with the grandchild. *Peterson v. Dean*, 102 Ark. App. 215, 283 S.W.3d 610 (2008).

Applicability.

This section does not vest grandparents with an absolute right to visitation or intervention, but merely a means of petitioning for visitation. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

This section did not enable a grandparent to maintain an action for visitation rights to a grandchild when the unwed custodial parent was the grandparent's child. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

The plain language of this section limits its operation to cases in which a marital relationship between the parents of the child has been severed or if the child is in the custody or under the guardianship of a person other than one or both of his natural or adoptive parents. *Reed v. Glover*, 319 Ark. 16, 889 S.W.2d 729 (1994).

A child was legitimated for purposes of the statute when his parents married after his birth and his father executed an acknowledgment of paternity and, therefore, the child's grandparents were not eligible to petition for visitation. *Ellis v. Bennett*, 69 Ark. App. 227, 10 S.W.3d 922 (2000).

Father alleged that he refused to comply with the trial court's visitation order because his son was being sexually abused by the grandmother, but the trial court found that the allegations of sexual abuse were unsubstantiated; thus, the trial court did not err in denying the father's petition to terminate the grandmother's visitation with the grandchildren pursuant to the Arkansas Grandparent Visitation Act and in finding him in contempt of the visitation order for refusing to allow the grandmother her court ordered visitation. *Hunt v. Perry*, 357 Ark. 224, 162 S.W.3d 891 (2004).

Modification of custody order was reversed because the trial court erred in

finding that a mother-in-law had a third-party interest in the divorce decree; the grandmother had no visitation rights unless they were allowed under this section. *Hurt v. Hurt*, 93 Ark. App. 37, 216 S.W.3d 604 (2005).

Adoption.

This section addresses itself to courts having jurisdiction in custody proceedings and is clearly inapplicable by its own terms to adoption proceedings. *Poe v. Case*, 263 Ark. 488, 565 S.W.2d 612 (1978) (decision under prior law).

Grandparents who have been granted visitation have a sufficient interest in adoption proceedings to entitle them to intervene for the limited purpose of offering such evidence as may be relevant to the focal issue such as whether the proposed adoption is in the best interest of the children. *Quarles v. French*, 272 Ark. 51, 611 S.W.2d 757 (1981) (decision under prior law).

Grandparents who have court ordered visitation rights are constitutionally entitled to receive notice of an adoption proceeding. Otherwise, their right to intervene in the adoption action is meaningless. *Brown v. Meekins*, 278 Ark. 67, 643 S.W.2d 553 (1982) (decision under prior law).

A grandmother's visitation and custody rights were derivative of her daughter's parental rights, and, as a result, were terminated when her daughter's parental rights were terminated. *Suster v. Ark. Dep't of Human Servs.*, 314 Ark. 92, 858 S.W.2d 122 (1993).

Mother's adoption by adoptive parents severed a grandmother's relationship with the mother (her daughter), and therefore, the grandmother was no longer a grandparent entitled to visitation under subdivision (b)(2) of this section with the mother's child. The circuit court erred by continuing to recognize the grandmother's visitation rights following the adoption. *Scudder v. Ramsey*, 2013 Ark. 115, 426 S.W.3d 427 (2013).

Best Interest of Child.

Even though the circuit court did not clearly err in finding that the grandparents had established a significant and viable relationship with the children, reversal was still required because the grandparents did not prove by a prepon-

derance of the evidence that visitation was in the children's best interest; in part, the mother testified that the grandmother condoned the father's drug use, and the circuit court clearly erred in finding that the grandparents had proven that the children were likely to be harmed by the loss of a relationship that, according to the mother, the children did not even recall. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (2016).

Determination of Reasonable Visitation.

It appeared the trial court summarily awarded the grandmother the standard visitation schedule used by the circuit for non-custodial parents, and the court was not convinced the trial court exercised its discretion, and thus the trial court on remand was to determine the amount of visitation that was reasonable under the circumstances. *Horton v. Freeman*, 2014 Ark. App. 166, 433 S.W.3d 280 (2014).

Elements.

Because the grandparents did not prove that they had been denied visitation, they failed to prove the loss in relationship necessary to satisfy this section. Further, the decision to reverse the order of grandparent visitation was equally based upon the grandparents' failure to show that they could and would cooperate with the father were visitation allowed; therefore, the trial court's finding that the grandparents were willing to cooperate with appellant if visitation was allowed was clearly erroneous. *Harvill v. Bridges*, 2012 Ark. App. 683 (2012).

Testimony, which was expressly credited by the trial court, established that the child lived with the grandmother for more than six consecutive months. *Horton v. Freeman*, 2014 Ark. App. 166, 433 S.W.3d 280 (2014).

Final Order.

Order granting or denying visitation is a final order for purposes of appeal. *Horton v. Freeman*, 2014 Ark. App. 166, 433 S.W.3d 280 (2014).

Great-Aunts.

There is no common law right to grandparent visitation, and it must logically follow that a great-aunt has no such right. *Hendershot v. Hendershot*, 30 Ark. App. 184, 785 S.W.2d 34 (1990).

A great-aunt seeking court-ordered visitation with her grand-nephew and who had helped raise the father of her grand-nephew did not qualify as a grandparent under the provisions of this section. *Hendershot v. Hendershot*, 30 Ark. App. 184, 785 S.W.2d 34 (1990).

Illustrative Cases.

Where the testimony of two of the children's teachers, two neighbors, and other witnesses clearly demonstrated the grandmother's ability to provide love, affection, and guidance to the children, the grandmother was entitled to visitation pursuant to this section. *Grant v. Richardson*, 2009 Ark. App. 187, 300 S.W.3d 499 (2009), overruled in part, *Pippinger v. Benson* (In re Adoption of J.P.), 2011 Ark. 535, 385 S.W.3d 266 (2011).

Where the mother of a child divorced her father after he was incarcerated for sexual assault and possession of child pornography, the trial court did not err by denying the paternal grandparents' petition for visitation pursuant to this section. The grandparents lacked the capacity to provide guidance to the child, because of their willingness to allow her to visit her biological father in prison; the grandparents also failed to rebut the presumption that the mother's denial or limitation of visitation was in the best interest of the child. *Painter v. Kerr*, 2009 Ark. App. 580, 336 S.W.3d 425 (2009).

Petition for visitation by a maternal grandmother and great-grandmother under this section was premature; while the father had severely restricted contact between them and the child, he had not cut off visitation and, thus, they failed to prove by a preponderance of the evidence that the relationship had been, or would have been, lost. *Pippinger v. Benson* (In re Adoption of J.P.), 2011 Ark. 535, 385 S.W.3d 266 (2011).

Grandparent had no standing to assert grandparent visitation rights under subsection (b) of this section regarding a grandchild born out of wedlock because the child had been adopted by the wife of the child's father and, under § 9-9-215(a)(2), was treated as if the blood descendant of the wife and thus was not illegitimate. *Walchli v. Morris*, 2011 Ark. App. 170, 382 S.W.3d 683 (2011).

Order granting appellees visitation with their grandchildren was reversed be-

cause the trial court substituted a benefit analysis for the required statutory presumption in favor of the parent's decision and in so doing, the trial court basically required appellant to prove that visitation would be harmful, losing sight of the fact that it was the parent who had a right to uninterrupted custody. *Bowen v. Bowen*, 2012 Ark. App. 403, 421 S.W.3d 339 (2012).

Award of grandparent visitation was improper. However, because the grandparents established regular contact with the child for at least 12 consecutive months during the child's life while his parents were still married, the grandparents proved a significant and viable relationship under subdivision (d)(1)(C) [now (d)(3)] of this section even though they had not had recent regular contact with the child. *Harrison v. Phillips*, 2012 Ark. App. 474, 422 S.W.3d 188 (2012).

Award of grandparent visitation to the child's paternal grandparents was inappropriate because they failed to rebut the statutory presumption under subsection (e) of this section that the mother's denying visitation was in the child's best interest. There was a lack of evidence that the loss of the grandparents' relationship with the child was likely to harm the child and the trial court made no written findings of the factors it considered in awarding grandparent visitation. *Harrison v. Phillips*, 2012 Ark. App. 474, 422 S.W.3d 188 (2012).

Decision granting the grandmother's petition for grandparent visitation was inappropriate pursuant to subdivision (c)(1) of this section because the trial court failed to address the required element of harm that the child would suffer from a loss of her relationship with her grandmother and there was insufficient evidence in the record to satisfy the grandmother's burden of proving that element. Thus, the trial court's finding that the grandmother had proved that visitation was in the child's best interest was clearly erroneous. *Favano v. Elliott*, 2012 Ark. App. 484, 422 S.W.3d 162 (2012).

Trial court abused its discretion in awarding visitation rights to paternal grandparents because they could not show that the relationship with their grandchildren was lost or would be lost absent a court order, where the grandparents alleged that the mother of the children was

“starting” to keep them away. *Drinkwitz v. Drinkwitz*, 2015 Ark. App. 345, 464 S.W.3d 489 (2015).

Jurisdiction.

This section does not purport to exclude grandparent visitation after a paternity finding, and § 9-10-109(a) specifically provides for visitation grants after paternity is found; consequently, where a petition was filed by the grandfather requesting visitation, the chancery court operated well within its authority in granting visitation rights to the grandfather as well as the father. *Rudolph v. Floyd*, 309 Ark. 514, 832 S.W.2d 219 (1992).

Without authority for the proposition that an order of paternity entered before the filing of a petition for grandparent visitation was required for the trial court to acquire subject-matter jurisdiction, the trial court had subject-matter jurisdiction. *Horton v. Freeman*, 2014 Ark. App. 166, 433 S.W.3d 280 (2014).

Presumption Not Rebutted.

Visitation with a maternal grandmother was improperly awarded because she failed to rebut the presumption under subsections (c)-(e) of this section; although she had a significant and viable relationship with a child for 12 consecutive months when he was under four years old, visitation was not in the child's best interest where there was no contact for many years, and the child did not wish to see the grandmother. The evidence did not show that the child would have been harmed by the father's decision to allow periodic contact at his discretion. *Brandt v. Willhite*, 98 Ark. App. 350, 255 S.W.3d 491 (2007).

Circuit court abused its discretion by granting the grandparents visitation with their granddaughter because the grandparents failed to establish that court-ordered visitation was in the granddaughter's best interest and failed to rebut the statutory presumption of this section that the father's decision was in the granddaughter's best interest, as they did not prove that a loss of the relationship between them and the granddaughter would likely harm her. There was no evidence presented at trial that the relationship between the grandparents and their granddaughter had been lost or would be lost, as the grandmother testified that she had seen her granddaughter seven times

from November 17, 2006 and January 29, 2007 and that the father was very willing to work with the grandparents and let them see their granddaughter as much as they wanted. *Oldham v. Morgan*, 372 Ark. 159, 271 S.W.3d 507 (2008).

Trial court did not err in denying a grandfather's petition for visitation with his grandson, although he had established a meaningful relationship with the child, because the grandfather did not rebut the presumption in subdivision (c)(1) of this section that the mother's decision limiting his visitation was in the best interest of the child. *Hollingsworth v. Hollingsworth*, 2010 Ark. App. 101, 377 S.W.3d 313 (2010).

Circuit court erred by awarding grandparent visitation; because the grandmother's visitation had been limited by the child's father but not altogether denied, she failed to prove the loss in relationship necessary to overcome the presumptive weight given to the parent's decision of whether grandparent visitation was in the best interest of the child under subdivision (c)(1) of this section. *Morris v. Dickerson*, 2012 Ark. App. 129, 388 S.W.3d 910 (2012).

Significant Relationship.

Mother and child one lived with the grandparents for at least the first six months of child one's life, which was sufficient to establish a significant and viable relationship. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (2016).

Evidence was conflicting as to how long the children lived with the grandparents after child two's birth, but given the grandmother's testimony that the mother and the children lived with the grandparents for four months after child two's birth, and taking the grandmother's testimony as true that she saw her grandchildren every other day until September 2013, this testimony supported the finding that the grandparents had established a significant and viable relationship with child two. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (2016).

This section requires only that the children have resided with the grandparents for at least six months with or without the current custodian present to establish a significant and viable relationship; there is no requirement that those six months be close in time to the date the grandpar-

ents file for visitation rights. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (2016).

Visitation Denied.

Trial court did not abuse its discretion in denying the grandfather's request for grandparent visitation where there was evidence that the child suffered from pain and swelling in her vaginal area and evidence that her grandfather touched her, although the evidence of the extent and form of the touching was contradictory. *Johnson v. Bennett*, 2016 Ark. App. 24, 480 S.W.3d 870 (2016).

Witness Credibility.

Mother disputed the finding that visitation was in the child's best interests, and she asked the court to make a credibility determination, but because it was the trial court's province to assess witness credibility, not the appellate court's province, the court affirmed on this point. *Horton v. Freeman*, 2014 Ark. App. 166, 433 S.W.3d 280 (2014).

Written Findings Required.

Denial of the grandparents' petition for visitation was reversed, given that the

trial court erred in failing to comply with the requirement in this section that the order denying the request state in writing all factors considered by the trial court in its decision; aside from stating that a hearing was held at which the various parties appeared, the order simply stated that the grandparents' petition was hereby denied, and as it was not entirely clear that the case had to be decided only one way as a matter of law, the trial court's failure required reversal and remand. *Schwartz v. Lobbs*, 2016 Ark. App. 242, 491 S.W.3d 161 (2016).

Circuit court made no written finding with regard to the best interests of the children, but that was not an impediment to reversing the grant of grandparent visitation because there was no basis on the record to affirm the trial court's decision. *Shores v. Lively*, 2016 Ark. App. 246, 492 S.W.3d 81 (2016).

Cited: *Vice v. Andrews*, 328 Ark. 573, 945 S.W.2d 914 (1997).

9-13-104. Transfer of custody on school property.

(a) In order to avoid continuing child custody controversies from involving public school personnel and to avoid disruptions to the educational atmosphere in our public schools, the transfer of a child between the child's custodial parent and noncustodial parent, when both parents are present, is prohibited from taking place on the real property of a public elementary or secondary school on normal school days during normal hours of school operations.

(b) The provisions of this section shall not prohibit one (1) parent, custodial or noncustodial, from transporting the child to school and the other parent, custodial or noncustodial, from picking up the child from school at prearranged times on prearranged days if prior approval has been made with the school's principal.

History. Acts 1993, No. 660, § 1.

9-13-105. Criminal records check.

(a) Any parent of a minor child in a circuit court case may petition the court to order a criminal records check of the other parent of the minor child or other adult members of the household eighteen (18) years of age or older who reside with the parent for custody and visitation determination purposes.

(b) If the court determines there is reasonable cause to suspect that the other parent or other adult members of the household eighteen (18) years of age or older who reside with the parent may have engaged in criminal conduct that would be relevant to the issue of custody of the minor child or visitation privileges, the court may order a criminal records check through the Arkansas Crime Information Center, including a check of the sex offender registry under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(c) The court shall review the results of the criminal records check, and if it deems appropriate, provide the results to the petitioning parent.

(d) Any costs associated with conducting a criminal records check shall be borne by the petitioning party.

History. Acts 1997, No. 730, § 1; 2011, No. 344, § 1; 2013, No. 477, § 1.

9-13-106. Attorney ad litem programs.

(a) The Director of the Administrative Office of the Courts is authorized to establish attorney ad litem programs to represent children in guardianship cases in circuit court when custody is an issue.

(b) When a circuit judge determines that the appointment of an attorney ad litem would facilitate a case in which custody is an issue and further protect the rights of the child, the circuit judge may appoint a private attorney to represent the child.

(c)(1) The Supreme Court, with advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in guardianship cases.

(2)(A) In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications.

(B) The attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

(d) When attorneys are appointed pursuant to subsection (b) of this section, the fees for services and reimburseable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

(e)(1) When a judge orders the payment of funds for the fees and expenses authorized by this section, the judge shall transmit a copy of the order to the office, which is authorized to pay the funds.

(2) The court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

(f) The office shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

(g) In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in

custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office, promulgated by rule, and approved by the Arkansas Judicial Council, Inc. and the Legislative Council.

(h)(1) The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

(2) Statistics shall include:

- (A) The ages of children served;
- (B) Whether the custody issue arises at a divorce or post-divorce stage;
- (C) Whether psychological services were ordered; and
- (D) Any other relevant information.

History. Acts 1999, No. 708, § 3; 2015, No. 1258, § 12.

A.C.R.C. Notes. Acts 2015, No. 1258, § 1, provided: "LEGISLATIVE FINDINGS. The General Assembly finds:

"(1) Amendment 92 to the Arkansas Constitution states in part: 'The General Assembly may provide by law for the review by a legislative committee of administrative rules promulgated by a state agency before the administrative rules become effective; and that administrative rules promulgated by a state agency shall not become effective until reviewed and approved by the legislative committee charged by law with the review of administrative rules under subdivision (a)(1) of this section';

"(2) As Amendment 92 does not define the term 'state agency', the General Assembly may establish a definition by law as part of its implementation of Amendment 92;

"(3) The General Assembly at this time wishes to exclude the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education from the definition of 'state agency' applied to the implementation of Amendment 92; and

"(4) The General Assembly or the Legislative Council reserve the right to amend the definition of 'state agency' in the future to include one (1) or all of the Arkansas State Game and Fish Commission, the State Highway Commission, the Arkansas State Highway and Transportation Department, and institutions of higher education."

Amendments. The 2015 amendment, in (g), inserted "promulgated by rule" and deleted "Administrative Rules and Regulations Committee of the Arkansas" preceding "Legislative Council".

9-13-107. Visitation rights of grandparents when parent does not have custody of child — Definitions.

(a) For purposes of this section:

(1) "Child" means a minor under eighteen (18) years of age who is:

- (A) The grandchild of the petitioner; or
- (B) The great-grandchild of the petitioner; and

(2) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition the circuit court that granted the guardianship or custody of a child for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if the child is in the custody or under the guardianship of a person other than one (1) or both of his or her natural or adoptive parents.

(c) Visitation with the child may be granted only if the court determines that visitation with the petitioner is in the best interest and welfare of the child.

(d)(1) An order granting or denying visitation rights to grandparents and great-grandparents under this section shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be ordered and exercised in a manner consistent with an order for grandparent visitation with a child awarded under § 9-13-103, which is distinct from a custody and visitation schedule awarded to a parent in a divorce case, unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted, limited, or expanded in any way, then the court shall include the restrictions, limitations, or expansions in the order granting visitation.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(4) After an order granting or denying visitation has been entered under this section, a party may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

History. Acts 2003, No. 652, § 2; 2013, No. 1512, § 1.

RESEARCH REFERENCES

ALR. Validity of Grandparent Visitation Statutes. 86 A.L.R.6th 1.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General As-

sembly, Family Law, Grandparents' Visitation Rights, 26 U. Ark. Little Rock L. Rev. 411.

CASE NOTES

Visitation.

Where evidence showed that the paternal grandparents allowed minor child to move in with his father in violation of a custody order, the trial court did not abuse

its discretion by determining that visitation with the paternal grandparents at the present time was not in the best interest of the child. *Bier v. Mills*, 95 Ark. App. 336, 237 S.W.3d 111 (2006).

9-13-108. Visitation — Preference of child.

In an action under this subchapter concerning a person's right to visitation with a minor child, the circuit court may consider the

preferences of the child if the child is of a sufficient age and capacity to reason, regardless of chronological age.

History. Acts 2005, No. 80, § 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

9-13-109. Drug testing — Proceedings concerning child custody, visitation, or welfare of child — Definition.

(a) For purposes of this section, “drug” means any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b) In a proceeding concerning child custody, child visitation, or the welfare of a child, the court may order drug testing of a party upon application of a party or by its own motion.

(c) The court may assess the cost of the drug testing to a party or parties or otherwise order or arrange payment of the cost of drug testing.

History. Acts 2005, No. 430, § 1.

9-13-110. Parents who are members of armed forces — Definitions.

(a) As used in this section:

(1) “Armed forces” means the National Guard and the reserve components of the armed forces, the United States Army, the United States Navy, the United States Marine Corps, the United States Coast Guard, the United States Air Force, and any other branch of the military and naval forces or auxiliaries of the United States or Arkansas; and

(2) “Mobilized parent” means a parent who:

(A) Is a member of the armed forces; and

(B) Is called to active duty or receives orders for duty that is outside the state or country.

(b) A court shall not permanently modify an order for child custody or visitation solely on the basis that one (1) of the parents is a mobilized parent.

(c)(1) A court of competent jurisdiction shall determine whether a temporary modification to an order for child custody or visitation is appropriate for a child or children of a mobilized parent.

(2) The determination under this subsection (c) includes consideration of any and all circumstances that are necessary to maximize the mobilized parent’s time and contact with his or her child that is consistent with the best interest of the child, including without limitation:

(A) The ordered length of the mobilized parent’s call to active duty;

(B) The mobilized parent's duty station or stations;

(C) The opportunity that the mobilized parent will have for contact with the child through a leave, a pass, or other authorized absence from duty;

(D) The contact that the mobilized parent has had with the child before the call to active military duty;

(E) The nature of the military mission, if known; and

(F) Any other factor that the court deems appropriate under the circumstances.

(d) This section shall not limit the power of a court of competent jurisdiction to permanently modify an order of child custody or visitation in the event that a parent volunteers for permanent military duty as a career choice regardless of whether the parent volunteered for permanent military duty while a member of the armed forces.

History. Acts 2007, No. 301, § 1.

CASE NOTES

Preservation for Review.

In a child custody case, a father's argument based on this section was not preserved for appellate review because it was not raised in the trial court. The basis for the custody award to the mother was not related to the fact that the father was in

the military; rather, it was determined that the mother was the primary caretaker of the children, and that not removing the children from the mother was in their best interest. *Vongkhamchanh v. Vongkhamchanh*, 2015 Ark. App. 584, 473 S.W.3d 570 (2015).

SUBCHAPTER 2 — UNIFORM CHILD CUSTODY JURISDICTION ACT

[Repealed.]

SECTION.

9-13-201 — 9-13-227. [Repealed.]

9-13-201 — 9-13-227. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1999, No. 668, § 405. The subchapter was derived from the following sources:

9-13-201. Acts 1979, No. 91, § 1; A.S.A. 1947, § 34-2701.

9-13-202. Acts 1979, No. 91, § 2; A.S.A. 1947, § 34-2702; Acts 1989, No. 821, § 2.

9-13-203. Acts 1979, No. 91, § 3; A.S.A. 1947, § 34-2703.

9-13-204. Acts 1979, No. 91, § 4; A.S.A. 1947, § 34-2704; Acts 1987, No. 841, § 1.

9-13-205. Acts 1979, No. 91, § 5; A.S.A. 1947, § 34-2705.

9-13-206. Acts 1979, No. 91, § 6; A.S.A. 1947, § 34-2706.

9-13-207. Acts 1979, No. 91, § 7; A.S.A. 1947, § 34-2707.

9-13-208. Acts 1979, No. 91, § 8; A.S.A. 1947, § 34-2708.

9-13-209. Acts 1979, No. 91, § 9; A.S.A. 1947, § 34-2709.

9-13-210. Acts 1979, No. 91, § 10; A.S.A. 1947, § 34-2710.

9-13-211. Acts 1979, No. 91, § 11; A.S.A. 1947, § 34-2711.

9-13-212. Acts 1979, No. 91, § 12; A.S.A. 1947, § 34-2712.

9-13-213. Acts 1979, No. 91, § 13; A.S.A. 1947, § 34-2713.

9-13-214. Acts 1979, No. 91, § 14; A.S.A. 1947, § 34-2714.

9-13-215. Acts 1979, No. 91, § 15; A.S.A. 1947, § 34-2715.

9-13-216. Acts 1979, No. 91, § 16; A.S.A. 1947, § 34-2716.

- 9-13-217. Acts 1979, No. 91, § 17; A.S.A. 1947, § 34-2717.
 9-13-218. Acts 1979, No. 91, § 18; A.S.A. 1947, § 34-2718.
 9-13-219. Acts 1979, No. 91, § 19; A.S.A. 1947, § 34-2719.
 9-13-220. Acts 1979, No. 91, § 20; A.S.A. 1947, § 34-2720.
 9-13-221. Acts 1979, No. 91, § 21; A.S.A. 1947, § 34-2721.
 9-13-222. Acts 1979, No. 91, § 22; A.S.A. 1947, § 34-2722.
 9-13-223. Acts 1979, No. 91, § 23; A.S.A. 1947, § 34-2723.
 9-13-224. Acts 1979, No. 91, § 24; A.S.A. 1947, § 34-2724.
 9-13-225. Acts 1979, No. 91, § 25.
 9-13-226. Acts 1979, No. 91, § 26; A.S.A. 1947, § 34-2725.
 9-13-227. Acts 1979, No. 91, § 27.
 For current law, see § 9-19-101 et seq.

SUBCHAPTER 3 — PERSONAL RECORDS OF CHILD

SECTION.

9-13-301. Noncustodial parent's right to child's scholastic records
 — Definitions.

SECTION.

9-13-302. Penalty for noncompliance.

9-13-301. Noncustodial parent's right to child's scholastic records — Definitions.

(a) As used in this subchapter:

- (1) "Child" means any person under eighteen (18) years of age; and
- (2) "College" means any public institution of higher education.

(b) Any noncustodial parent who has been awarded visitation rights by the court with respect to a child shall be provided upon request a copy of the current scholastic records of the child by the school district or college attended by the child.

History. Acts 1997, No. 345, § 1.

9-13-302. Penalty for noncompliance.

Refusal by any school district or college official or employee having custody or control of student scholastic records to provide such records to any person entitled to receive a copy under the provisions of this subchapter shall be an unclassified misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

History. Acts 1997, No. 345, § 2.

SUBCHAPTER 4 — INTERNATIONAL CHILD ABDUCTION PREVENTION ACT

SECTION.

9-13-401. Title.
 9-13-402. Definitions.
 9-13-403. Prevention of international child abduction.
 9-13-404. Considerations of court.

SECTION.

9-13-405. Abduction risk factors.
 9-13-406. Abduction prevention measures.
 9-13-407. Ex parte relief.

9-13-401. Title.

This subchapter shall be known as the “International Child Abduction Prevention Act”.

History. Acts 2005, No. 170, § 1.

RESEARCH REFERENCES

ALR. Construction and Application of Provision of Hague Convention on Civil Aspects of International Child Abduction Specifying One-Year Period for Parent to File for Return of Child Wrongfully Removed From or Retained Outside Country of Habitual Residence, as Implemented in

International Child Abduction Remedies Act, 42 U.S.C. § 11603(b), (f)(3). 79 A.L.R. Fed. 2d 481.

U. Ark. Little Rock L. Rev. Survey of Legislation, 2005 Arkansas General Assembly, Family Law, 28 U. Ark. Little Rock L. Rev. 357.

9-13-402. Definitions.

As used in this subchapter:

(1) “Child” means a minor under eighteen (18) years of age who is the subject of a custody or visitation:

(A) Matter currently pending before a court; or

(B) Order that has been issued by a court;

(2) “Court” means any circuit court of competent jurisdiction;

(3) “Custodian” means the custodial parent, legal guardian, or lawful custodian of the child as determined by a court of competent jurisdiction in the State of Arkansas;

(4) “Dual nationality” means the simultaneous possession of citizenship in two (2) countries;

(5)(A) “Human rights” means the basic principles that recognize each child’s freedom and right to be protected from abuse and neglect.

(B) “Human rights” includes the protection of children from:

(i) Abuse and neglect;

(ii) Arranged marriages;

(iii) Child labor;

(iv) Genital mutilation;

(v) Sexual exploitation;

(vi) Slavery;

(vii) Torture and the deprivation of liberty; and

(viii) Armed conflicts.

(C) “Human rights” includes the right of children to:

(i) Survive and develop;

(ii) A name from birth;

(iii) Be granted a nationality;

(iv) Freedom of expression;

(v) Freedom of thought, conscience, and religion; and

(vi) A free and compulsory education;

(6) “International child abduction” means the act of taking away, enticing away, withholding, keeping, or concealing a child from his or her parent or custodian by removing the child from the United States;

- (7) "Parent" means the biological or adoptive parent of a child;
- (8) "Registration" means the official act of notification or documentation of the birth, name, or lineage of an individual; and
- (9) "Security professional" means:
 - (A) A bodyguard;
 - (B) An off-duty certified law enforcement officer;
 - (C) A person who holds a license issued by the State of Arkansas or another state; or
 - (D) A person who has past experience or training as a professional in the area of securing the safety of persons.

History. Acts 2005, No. 170, § 1.

9-13-403. Prevention of international child abduction.

A custodian or parent may petition or move the court under this subchapter to determine whether one (1) or more of the measures described in § 9-13-406 is necessary to protect a child from the risk of international child abduction.

History. Acts 2005, No. 170, § 1.

9-13-404. Considerations of court.

To determine a matter under this subchapter, the court shall consider:

- (1) The best interests of the child;
- (2) The right of a parent for frequent and continuing contact with his or her child;
- (3) The rights of a custodian under an order from a court of competent jurisdiction in the State of Arkansas;
- (4) The risk of the child's becoming a victim of international child abduction by a parent, custodian, or any person acting on the behalf of the parent or custodian, based on the court's evaluation of the risk factors described in § 9-13-405;
- (5) Any obstacles to locating, recovering, or returning the child if the child is a victim of international child abduction; and
- (6) The potential physical or psychological harm to the child if the child is a victim of international child abduction.

History. Acts 2005, No. 170, § 1.

9-13-405. Abduction risk factors.

(a) To determine if there is a risk of international child abduction, the court shall consider:

- (1)(A) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has committed international child abduction as defined in § 9-13-402(6).

(B) In defense of this factor, the parent or custodian may establish that he or she had a good faith belief that his or her conduct was necessary to avoid imminent harm to the child;

(2) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has threatened to commit the act of international child abduction as defined in § 9-13-402(6);

(3) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has attempted to commit the act of international child abduction as defined in § 9-13-402(6);

(4) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has taken a step that constitutes an overt act toward the accomplishment of international child abduction as defined in § 9-13-402(6);

(5)(A) Whether the parent or custodian lacks a financial reason to stay in the United States.

(B) Evidence of this factor shall include, but not be limited to, evidence that the parent or custodian is:

(i) Financially independent;

(ii) Able to work outside of the United States; or

(iii) Unemployed;

(6) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has recently engaged in activities that could facilitate the removal of the child from the United States by the parent or custodian, including, but not limited to:

(A) Quitting a job;

(B) Selling a primary residence;

(C) Terminating a lease;

(D) Closing bank accounts;

(E) Liquidating other assets;

(F) Hiding or destroying documents;

(G) Applying for a passport or visa for the parent, custodian, or child;

(H) Applying to obtain birth certificate, school records, or medical records of the child;

(I) Making travel arrangements for the parent, custodian, or child; or

(J) Purchasing airline, railway, cruise ship, or other travel tickets for the parent, custodian, or child;

(7) Whether the parent or custodian has a history of:

(A) Child abuse;

(B) Domestic violence;

(C) Marital instability; or

(D) Not cooperating with the other parent or custodian;

(8) Whether the parent or custodian has a criminal history;

(9) Whether the parent or custodian has a history of violating court orders;

(10) Whether the parent or custodian:

(A) Has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant

with the Hague Convention on the Civil Aspects of International Child Abduction; and

(B) Lacks strong ties to the United States, regardless of whether the parent or custodian is a citizen or permanent resident of the United States; or

(11) Any other factor that the court finds to be relevant to the determination of the risk for international child abduction.

(b) If the court finds that there is credible evidence of a risk of international child abduction based on the court's consideration of the factors in subsection (a) of this section, then the court shall also consider evidence regarding the following factors to evaluate the risk of international child abduction:

(1) Whether the parent or custodian is undergoing a change in status with the United States Citizenship and Immigration Services that would adversely affect his or her ability to remain legally in the United States;

(2) Whether the parent's or custodian's application for United States citizenship has been denied by the United States Citizenship and Immigration Services;

(3) Whether the parent, custodian, or anyone acting on behalf of the parent or custodian has forged or presented misleading or false evidence to obtain a visa, a passport, a Social Security card, or any other identification card or has made any misrepresentations to the United States Government; or

(4) Whether the foreign country to which the parent or custodian has ties:

(A) Presents obstacles to the recovery and return of a child who is abducted to that country from the United States;

(B) Has no legal mechanisms for immediately and effectively enforcing an order issued by a court of this state regarding the possession of or access to the child;

(C) Has laws or practices that would:

(i) Enable the parent, custodian, or any person acting on behalf of the parent or custodian to obtain registration of the child with the country for the purposes of citizenship or for other purposes;

(ii) Enable the parent, custodian, or any person acting on the behalf of the parent or custodian to obtain for the child a passport or other travel documents from the country;

(iii) Allow entry of the child into the country without a passport or other travel documents;

(iv) Bestow nationality of the country on the child through automatic acquisition or other means;

(v) Not recognize, accept, or allow dual nationality of citizens of the country;

(vi) Enable the parent, custodian, or any person acting on the behalf of the parent or custodian to prevent the child's other parent or custodian from contacting the child without due cause;

(vii) Restrict the child's other parent or custodian from freely traveling to or exiting from the country because of that parent's or custodian's gender, nationality, or religion; or

(viii) Restrict the child's ability to legally leave the country after the child reaches the age of majority because of the child's gender, nationality, or religion;

(D) Is included by the United States Department of State on a list of state sponsors of terrorism;

(E) Is a country for which the United States Department of State has issued a travel warning to United States citizens regarding travel to the country;

(F) Does not have an embassy of the United States in the country;

(G) Is engaged in any active military action or war, including a civil war;

(H) Is a party to and compliant with the Hague Convention on the Civil Aspects of International Child Abduction, according to the most recent report on compliance issued by the United States Department of State;

(I) Does not provide for the extradition of a perpetrator of international child abduction or the return of the child to the United States; or

(J) Poses a risk that the child's physical health or safety would be endangered in the country because of specific circumstances relating to the child or because of human rights violations that are being committed against children.

History. Acts 2005, No. 170, § 1.

9-13-406. Abduction prevention measures.

(a) If the court finds that it is in the best interest of the child to take measures to protect the child from international child abduction under this subchapter, then the court may take any of the following actions:

(1) Appoint a person as the sole managing custodian of the child other than the parent or custodian who presents a risk of international child abduction;

(2) Change the existing order regarding custody or visitation to avoid the risk of international child abduction;

(3) Order supervised visitation to prevent the child from becoming a victim of international child abduction for any of the following who present a risk of international child abduction under this subchapter:

(A) The parent;

(B) The custodian; or

(C) Any other individual who has been granted visitation rights;

(4) Enjoin the parent, custodian, or any person acting on behalf of the parent or custodian who presents a risk of international child abduction from:

(A) Disrupting or removing the child from the school or childcare facility in which the child is enrolled; or

(B) Approaching the child at any location other than a site designated for supervised visitation;

(5) Order passport and travel controls, including controls that prohibit the parent, custodian, or any person acting on the behalf of the parent or custodian who presents a risk of international child abduction:

(A) From removing the child from this state or the United States;

(B) To surrender any passport issued in the child's name, including any passport issued in the name of both the parent and the child; and

(C) From applying on behalf of the child for a new or replacement passport or international travel visa;

(6) Require the parent or custodian who presents a risk of international child abduction to provide:

(A) To the Office of Children's Issues within the United States Department of State and the relevant foreign consulate or embassy:

(i) Written notice of the court-ordered passport and travel restrictions for the child; and

(ii) A properly authenticated copy of the court order detailing the restrictions and documentation of the parent's or custodian's agreement to the restrictions; and

(B) To the court, proof of receipt of the written notice required by subdivision (a)(6)(A)(i) of this section by the Office of Children's Issues within the United States Department of State and the relevant foreign consulate or embassy;

(7) Order the parent, custodian, or person acting on behalf of the parent or custodian who presents a risk of international child abduction to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by that person to a foreign country;

(8) Authorize the appropriate law enforcement agencies to take measures to prevent the child from becoming a victim of international child abduction; or

(9) Include in the court's order provisions that:

(A) Identify the United States as the country of habitual residence of the child;

(B) Define the basis for the court's exercise of jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.;

(C) State the manner in which notice and opportunity to be heard were given to other parties to the matter, including the parent or custodian;

(D) State a thorough description of the following:

(i) Who has custody of the child;

(ii) Who has visitation rights with the child;

(iii) Whose visitation rights must be supervised;

(iv) The specific requirements of any ordered supervised visitation as applied to each person with visitation rights; and

(v) Any other limitations regarding custody or visitation; and

(E) State that a party's violation of the order may subject the party to a civil penalty, a criminal penalty under § 5-26-501 et seq., or to both civil and criminal penalties.

(b)(1) If a court orders supervised visitation under subdivision (a)(3) of this section, the court shall order the supervised visitation to continue until the court finds that supervised visitation is no longer necessary or until the child reaches eighteen (18) years of age.

(2) If the court orders supervised visitation under subdivision (a)(3) of this section, the court's order regarding supervised visitation shall require:

(A) That the supervisor be present with the child at all times;

(B) That the supervised visitation takes place at all times at a visitation center or other location that is adequate to prevent the child from becoming a victim of international child abduction; and

(C) The usage of all necessary security professionals, protocols, procedures, or devices that are:

(i) Adequate to prevent the child from becoming a victim of international child abduction;

(ii) Available in the geographic area of the supervised visitation location; and

(iii) Recognized in the security profession as effective in securing a location and the safety of a person.

(c) The court shall consider the requests of the parent or custodian who does not pose a risk of international child abduction when determining the best methods to prevent the international abduction of a child at risk of becoming a victim of international child abduction.

History. Acts 2005, No. 170, § 1.

RESEARCH REFERENCES

ALR. Construction and Application of Provision of Hague Convention on Civil Aspects of International Child Abduction Specifying One-Year Period for Parent to File for Return of Child Wrongfully Re-

moved From or Retained Outside Country of Habitual Residence, as Implemented in International Child Abduction Remedies Act, 42 U.S.C. § 11603(b), (f)(3). 79 A.L.R. Fed. 2d 481.

9-13-407. Ex parte relief.

(a) A court shall immediately conduct an ex parte hearing if a petitioner:

(1) Alleges that:

(A) An emergency exists; and

(B) His or her child is in imminent danger of becoming a victim of international child abduction as defined under § 9-13-402(6); and

(2) Requests an ex parte hearing on the issue seeking temporary and immediate relief.

(b) At an ex parte hearing under this section, a court may grant the temporary relief necessary to prevent the child from becoming a victim of international child abduction until a full hearing on the matter can

be held if the petitioner presents credible evidence that supports his or her allegation that his or her child is in imminent danger of becoming a victim of international child abduction.

(c) A temporary order issued under this section shall not be effective for more than ninety (90) days.

History. Acts 2005, No. 170, § 1.

CHAPTER 14

SPOUSAL AND CHILD SUPPORT

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ENFORCEMENT GENERALLY.
3. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT. [REPEALED.]
4. STATE COMMISSION ON CHILD SUPPORT.
5. HEALTHCARE COVERAGE.
- 6-7. [RESERVED.]
8. CENTRALIZED CLEARINGHOUSE.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Handling costs for withholding, § 16-110-417.

RESEARCH REFERENCES

ALR. Laches or acquiescence as defense barring recovery of arrearages. 5 A.L.R.4th 1015.

Removal by custodial parents of child from jurisdiction in violation of court order justifying termination, suspension, or reduction of child support. 8 A.L.R.4th 1231.

Legal authority of person solemnizing marriage. 13 A.L.R.4th 1323.

Gender-based classification in laws proscribing nonsupport of spouse or child. 14 A.L.R.4th 717.

Validity and enforceability of escalation clause in divorce decree relating to alimony and child support. 19 A.L.R.4th 830.

“Extraordinary” or similar medical or dental expenses for purposes of divorce decree requiring one parent to pay such expenses for child in custody of other parent. 39 A.L.R.4th 502.

Postsecondary education as within non-divorced parent’s child support obligation. 42 A.L.R.4th 819.

Stepparent’s postdivorce duty to support stepchild. 44 A.L.R.4th 520.

Cohabitation, divorced or separated

spouse’s living with member of opposite sex as affecting other spouse’s obligation of alimony or support under separation agreement. 47 A.L.R.4th 38.

Postmajority disability as reviving parental duty to support child. 48 A.L.R.4th 919.

Court’s authority to reinstitute parent’s support obligation after terms of prior decree have been fulfilled. 48 A.L.R.4th 952.

Right to attorney’s fees in proceeding for modification of child custody or support order after absolute divorce. 57 A.L.R.4th 710.

Power to modify spousal support award for a limited term, issued in conjunction with divorce, so as to extend the term or make the award permanent. 62 A.L.R.4th 180.

Withholding visitation rights for failure to make alimony or support payments. 65 A.L.R.4th 1155.

Attributing undisclosed income to parent or spouse for purposes of making child or spousal support award. 70 A.L.R.4th 173.

Rights and obligations resulting from human artificial insemination. 83 A.L.R.4th 295.

Parent's child support liability as affected by other parent's fraudulent misrepresentation regarding sterility or use of birth control, or refusal to get an abortion. 2 A.L.R.5th 301; 2 A.L.R.5th 337.

Authority of court, upon entering default judgement, to make orders for child custody or support which were not specifically requested in pleadings of prevailing party. 5 A.L.R.5th 863.

Spouse's right to set off debt owed by other spouse against accrued spousal or child support payments. 11 A.L.R.5th 259.

Obligor parent's death as affecting decree for support of child. 14 A.L.R.5th 557.

Consideration of obligated spouse's earnings from overtime or "second job" held in addition to regular full-time employment in fixing alimony or child support awards. 17 A.L.R.5th 143.

Loss of income due to incarceration as affecting child support obligation. 27 A.L.R.5th 540.

Treatment of depreciation expenses claimed for tax or accounting purposes in determining ability to pay child or spousal support. 28 A.L.R.5th 46.

Right to credit on child support payments for Social Security or other government dependency payments made for benefit of child. 34 A.L.R.5th 447.

Support provisions of judicial decree or order as limit of parent's liability for expenses of child. 35 A.L.R.5th 757.

Validity and construction of provision

for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Decrease in income of obligor spouse following voluntary termination of employment as basis for modification of child support award. 39 A.L.R.5th 1.

Alimony or child-support awards as subject to attorney's liens. 49 A.L.R.5th 595.

What voluntary acts of child, other than marriage or entry into the military service, terminate parent's obligation to support. 55 A.L.R.5th 557.

Application of child-support guidelines to cases of joint-, split-, or similar shared-custody arrangements. 57 A.L.R.5th 389.

Consideration of obligor spouse's or parents' personal-injury recovery or settlement in fixing alimony or child support. 59 A.L.R.5th 489.

Basis for imputing income for purpose of determining child support where obligor spouse is voluntarily unemployed or underemployed. 76 A.L.R.5th 191.

Am. Jur. 24A Am. Jur. 2d, Divorce & S., § 569 et seq.

59 Am. Jur. 2d, Parent & C., § 42 et seq.

Ark. L. Rev. Notes, Towery v. Towery: Has the "Flexible" Child Support Rule Lost Its Stretch?, 39 Ark. L. Rev. 539.

C.J.S. 27B C.J.S., Divorce, § 500 et seq.

27C C.J.S., Divorce, § 1137 et seq.

28 C.J.S., Dom Abuse, § 18.

67A C.J.S., Parent & C, § 156 et seq.

U. Ark. Little Rock L.J. Parness, Prospective Fathers and Their Unborn Children, 13 U. Ark. Little Rock L.J. 165.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

9-14-101. Implied consent to jurisdiction for child support and maintenance or to establish paternity — Service of process.

9-14-102. Wage assignment and deduction — Definitions.

9-14-103. Quarterly report of funds, moneys, etc., received for child support.

9-14-104. [Repealed.]

9-14-105. Petition for support — Definitions.

SECTION.

9-14-106. Noncustodial parents — Amount of support — Definition.

9-14-107. Change in payor income warranting modification — Definition.

9-14-108. Transfer between local jurisdictions.

9-14-109. Automatic assignment of rights.

9-14-110. Arkansas Registry of Child Support Orders — Definition.

Cross References. Alimony and child support — bond — method of payment, § 9-12-312.

Maintenance and attorney's fees, § 9-12-309.

Modification of allowance for alimony and maintenance, § 9-12-314.

Effective Dates. Acts 1989, No. 383, § 5: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the recent court interpretations of support law for minor children have led to lack of uniformity in collection and enforcement and that it is in the best interests of the citizens of this state that all persons financially able to do so should contribute to the support of their minor child. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 367, § 6: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected, modified and enforced in the most expedient manner for all children in this state; that the smooth transition from current requirements to those of this act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage."

Acts 1991, No. 870, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 337, § 2: Mar. 10, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that children are not receiving the amount of child support to which they are entitled under current law; that child support is an essential part of a custodial parent's income that is necessary to provide the basic needs for the child; and that this act is immediately necessary to prevent children from being denied the support they are entitled to under law and to prevent the undue delay of changes in the award of child support. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2019, No. 904, § 14: Jan. 1, 2020.

RESEARCH REFERENCES

ALR. Adequacy or excessiveness of money awarded as child support and alimony. 27 A.L.R.4th 864; 27 A.L.R.4th 1038.

U. Ark. Little Rock L.J. Sullivan, The

Need for a Business or Payroll Records Affidavit for Use in Child Support Matters, 11 U. Ark. Little Rock L.J. 651.

Survey, Civil Procedure, 12 U. Ark. Little Rock L.J. 603.

9-14-101. Implied consent to jurisdiction for child support and maintenance or to establish paternity — Service of process.

(a) Any person who establishes or acquires a marital domicile in this state, who contracts marriage in this state, or who becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent natural or adopted child in this state and fails to support the child as required by the laws of this state, is deemed to have consented and submitted to the jurisdiction of the courts of this state as to any cause of action brought against that person for the support and maintenance of the child.

(b) In an action to establish paternity or to establish or enforce a child support obligation in regard to a child who is the subject of the action, a person is deemed to have consented and submitted to the jurisdiction of the courts of this state if any of the following circumstances exists:

(1) The person engaged in sexual intercourse with the child's mother in this state during the period of the child's conception or the affected child was conceived in this state; or

(2) The person resides or has resided with the child in this state.

(c) Service of process upon any person who is deemed by this section to have consented and submitted to the jurisdiction of the courts of this state may be made pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

History. Acts 1969, No. 297, §§ 1, 2; A.S.A. 1947, §§ 34-2446, 34-2447; Acts 1989, No. 508, §§ 1, 2.

RESEARCH REFERENCES

Ark. L. Rev. Conflict of Laws: Arkansas, 32 Ark. L. Rev. 1.

U. Ark. Little Rock L.J. Survey of Arkansas Law, Civil Procedure, 1 U. Ark. Little Rock L.J. 131.

Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200.

CASE NOTES

Jurisdiction.

Court had personal jurisdiction over a husband even though he was residing in another state when the suit was filed, where Arkansas was the parties' last matrimonial domicile, the wife and the chil-

dren continued to reside in the state, and the husband left the state voluntarily thereby failing to support his dependent children. *Bunker v. Bunker*, 261 Ark. 851, 552 S.W.2d 641 (1977).

9-14-102. Wage assignment and deduction — Definitions.

(a) As used in this section:

(1) "Political subdivision thereof" means all cities of the first class, cities of the second class, incorporated towns and counties and their

agencies, boards, commissions, institutions and other instrumentalities, and school districts; and

(2) "State of Arkansas" means all agencies, boards, commissions, institutions, and other instrumentalities of the state.

(b)(1) When a person is ordered by a court of record to pay for the support of his or her children under eighteen (18) years of age, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, shall order his or her employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its order for the support of the children under eighteen (18) years of age.

(2) In determining good cause, the court may take into consideration evidence of the degree of the respondent's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the support order.

(c)(1) Any order for support that orders that the payment be made to the support collection unit shall order the respondent's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to the person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its orders for the support of the children under eighteen (18) years of age.

(2)(A) However, any such support order shall provide that no such deduction shall be made unless and until the support collection unit established by the appropriate social services district has determined that the person is delinquent in making a specified number of payments determined by the court in the order and a copy of the order and determination has been served upon the person's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States.

(B) Additionally, the person shall be given notice of the determination at least fifteen (15) days prior to service of the order and determination on the employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States.

(C) If the person pays all arrearages within the fifteen-day period, the order and determination shall not be served and no deduction shall be required by reason of the determination, but the payment shall not affect or otherwise limit any determination made as a result of any subsequent delinquencies.

(3) The employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States shall deduct the amount as ordered from the moneys due or payable and forward it monthly as directed in the order.

(d)(1) The court shall require the person to provide the court with his or her full name, address, and Social Security number.

(2) However, a Social Security number may be required only when permitted under federal law.

History. Acts 1979, No. 722, §§ 1, 2; 1983, No. 594, § 1; A.S.A. 1947, §§ 34-2424.1, 34-2424.2.

Publisher's Notes. The operation of this section may be affected by § 9-14-217.

CASE NOTES

Sovereign Immunity.

This section affords no basis for jurisdiction over the state. *Dep't of Human Servs. v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990).

This section, which provides for wage assignments and deductions for child sup-

port, merely provides a means by which the payment of child support can be more effectively enforced; it is not a waiver of sovereign immunity. *Dep't of Human Servs. v. Crunkleton*, 303 Ark. 21, 791 S.W.2d 704 (1990).

9-14-103. Quarterly report of funds, moneys, etc., received for child support.

(a)(1)(A) Upon application of any interested person to any judge of any court of record having jurisdiction of the cause of action, the court may require any person receiving as guardian of the person, either by adoption of law or order of any court, any funds, moneys, credits, goods, chattels, or anything of value for the support, maintenance, care, or custody of a minor child to file a verified quarterly report of all moneys or goods received therefor.

(B) The report shall state the items, goods, or services, the date purchased, and from whom purchased.

(2) The quarterly report shall be filed with the clerk of the court or other body rendering the original order or decree between the first and fifteenth day of the calendar month immediately following the end of each calendar quarter.

(b)(1) This section shall apply to all awards, orders, or decrees made by any court or legally constituted body making such award.

(2) Any report required to be made under this section shall be a public record.

(c) It is the purpose of this section and the intention of the General Assembly that any funds, moneys, credits, chattels, goods, or anything of value that have been or are ordered, decreed, adjudged, adjudicated, or awarded for the use and benefit of any minor child shall be used and inure solely to the use and benefit of the minor child for which it is or was ordered paid.

History. Acts 1969, No. 301, §§ 1-3;
A.S.A. 1947, §§ 34-2443 — 34-2445.

CASE NOTES

ANALYSIS

Accounting.

Accounting Not Warranted.

Accounting.

An accounting is not viewed as a vehicle by which the non-custodial parent could discover whether child-support payments are being properly used, rather, the court, in its discretion, can order an accounting upon a showing that it is warranted. *Schueller v. Schueller*, 86 Ark. App. 347, 185 S.W.3d 107 (2004).

Accounting Not Warranted.

Trial court did not err in dismissing husband's petition for a quarterly accounting of child support payments where he failed to demonstrate an accounting was warranted; husband paid \$570 per month, and wife paid \$250 per month for medical insurance alone, leaving her with a little over \$300 per month to provide the son with shelter, food, clothes, and any other day-to-day necessity. *Schueller v. Schueller*, 86 Ark. App. 347, 185 S.W.3d 107 (2004).

9-14-104. [Repealed.]

Publisher's Notes. This section, concerning failure to support — defense of insanity to contempt proceedings, was re-

pealed by Acts 2013, No. 1119. The section was derived from Acts 1971, No. 433, ch. 6, § 12; A.S.A. 1947, §§ 34-2449, 34-2449n.

9-14-105. Petition for support — Definitions.

(a) The circuit courts in the several counties in this state shall have exclusive jurisdiction in all civil cases and matters relating to the support of a minor child or support owed to a person eighteen (18) or older that accrued during that person's minority.

(b) The following may file a petition to require the noncustodial parent or parents of a minor child to provide support for the minor child:

- (1) Any parent having physical custody of a minor child;
- (2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;
- (3) A minor child by and through his or her guardian or next friend;

or

(4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the parent or person to whom physical custody has been relinquished or awarded is receiving assistance in the form of Aid to Families with Dependent Children, Transitional Employment Assistance, Medicaid, Foster Care Program of Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., or has contracted with the Department of Finance and Administration for the collection of support.

(c) Any person eighteen (18) years of age or above to whom support was owed during his or her minority may file a petition for a judgment against the nonsupporting parent or parents. Upon hearing, a judgment may be entered upon proof by a preponderance of the evidence for the amount of support owed and unpaid.

(d) As used in this subchapter:

(1) “Minor child” means a child less than eighteen (18) years of age; and

(2) “Noncustodial parent” means a parent who resides outside the household or institution in which the minor child resides.

(e) Any action filed pursuant to this subchapter may be brought at any time up to and including five (5) years from the date the child reaches eighteen (18) years of age.

(f) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter and shall retroactively apply to all child support orders now existing.

History. Acts 1989, No. 383, § 1; 1991, No. 870, § 1; 1993, No. 1242, § 1; 1995, No. 1184, § 6; 2015, No. 565, § 1.

Amendments. The 2015 amendment inserted “Transitional Employment Assistance” in (b)(4).

Cross References. Assignment of right to child support to Office of Child Support Enforcement of the Revenue Division of the Department of Human Services by recipient of Medicaid assistance, § 20-77-109.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

Moore, Child Support Arrearages: What Statute of Limitations (If Any) Applies?, 19 U. Ark. Little Rock L.J. 487.

CASE NOTES

ANALYSIS

Death.
Jurisdiction.
Legal Custody.
Res Judicata.
Retroactive Child Support.
Standing.
Statute of Limitations.

Death.

Because a minor child had died, a mother was unable to bring a child support action against a father under subsection (b) of this section since the mother no longer had physical custody of the child; moreover, the father’s obligation to support the child terminated upon her death under § 9-14-237(a)(1). *Hardy v. Wilbourne*, 370 Ark. 359, 259 S.W.3d 405 (2007), cert. denied, 552 U.S. 1183, 128 S. Ct. 1245, 170 L. Ed. 2d 65 (2008).

Jurisdiction.

If a chancery court has subject matter jurisdiction to decide a case under the Arkansas Constitution, the circuit court has no power to review that decision.

Partlow v. Darling Store Fixtures, 314 Ark. 87, 858 S.W.2d 695 (1993).

The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court. *Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

The chancery court has exclusive jurisdiction of all cases involving matters of child support; neither the municipal nor circuit court has concurrent jurisdiction with chancery court to enforce an agreement for child support. *Boren v. Boren*, 318 Ark. 378, 885 S.W.2d 852 (1994).

Circuit court cannot decide a claim of breach of contract or otherwise enforce a child support agreement since under subsection (a) of this section it does not have subject-matter jurisdiction. *Granquist v. Randolph*, 326 Ark. 809, 934 S.W.2d 224 (1996).

Regardless of the context in which a support order is entered, whether divorce, paternity, abandonment, or any other situation, a trial court has the power to enter a child-support order; thus, where the father was held in contempt for failure

to pay support and appealed, even though the trial court did not have jurisdiction to dissolve the marriage because there was no corroboration of residence, the trial court had jurisdiction to enter contempt orders for the father's failure to pay support. *Rogers v. Rogers*, 80 Ark. App. 430, 97 S.W.3d 429 (2003).

Legal Custody.

Even though child custody and child support are separate and distinct issues, and this section only addresses child support, the chancery court did not abuse its discretion in requiring a father to seek legal custody of the parties' child before the court would award child support. *Brown v. Cleveland*, 328 Ark. 73, 940 S.W.2d 876 (1997).

Res Judicata.

Children's claim for unpaid child support, which they could not have brought until after they reached eighteen, was barred because it was not a different one from that which was barred when their mother failed to bring it within the then-applicable five-year limitation period. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

Retroactive Child Support.

This section provided the adult plaintiff with a cause of action to recover unpaid child support accrued during his minority. *Fonken v. Fonken*, 334 Ark. 637, 976 S.W.2d 952 (1998).

Standing.

Prior to 1989, there was no statutory authority for children to pursue a child support claim. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

This section does not purport to apply to the unusual situation in which a parent seeks support payable during a disabled child's adulthood. *Guthrie v. Guthrie*, 2015 Ark. App. 108, 455 S.W.3d 839 (2015).

Statute of Limitations.

This section contemplates one support obligation which may be pursued by different persons at different times; the limitation period is applicable to all of them. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

Cited: *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992); *State Office of Child Support Enforcement v. Harris*, 87 Ark. App. 59, 185 S.W.3d 120 (2004).

9-14-106. Noncustodial parents — Amount of support — Definition.

(a)(1)(A) In determining a reasonable amount of support initially or upon review to be paid by the noncustodial parent or parents, the court shall refer to the most recent revision of the family support chart.

(B) It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

(C) Only upon a written finding that the application of the family support chart would be unjust or inappropriate as determined under established criteria set forth in the family support chart shall the presumption be rebutted.

(D)(i) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(ii) As used in subdivision (a)(1)(D)(i) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days, excluding credit for time served before sentencing.

(2)(A) The court may provide for a partial abatement or reduction of the stated child support amount for any period of extended visitation with the noncustodial parent.

(B) The court shall consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent that are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents.

(C) Abatement or reduction of the chart amount and justification of the abatement or reduction shall be clearly set forth in the written findings of the court.

(D)(i) The noncustodial parent shall provide written notification within ten (10) days, when abatement or reduction of child support should occur due to extended visitation, to the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when applicable.

(ii) It is the responsibility of the noncustodial parent to notify the clerk of the court responsible for receipt of the child support payment, the noncustodial parent's employer, if income withholding is in effect, and the office, when applicable, when abatement or reduction should stop and payment of child support should resume.

(E) If the noncustodial parent fails to exercise extended visitation periods, the child support shall not be abated or reduced.

(b) Subsequent to the finding by the court that the defendant should be ordered to pay support for the minor child, the court shall follow the same procedure and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit courts in cases involving separation or divorce between the parents of the child.

History. Acts 1989, No. 383, § 1; 1993, No. 607, § 1; 1995, No. 1184, § 7; 1997, No. 1296, § 12; 2019, No. 904, § 3.

A.C.R.C. Notes. Please refer to the Appendix for Administrative Order No.

10, and refer to the Court Rules for case notes that reference Administrative Order No. 10.

Amendments. The 2019 amendment added (a)(1)(D).

RESEARCH REFERENCES

ALR. Right to credit on child support arrearages for time parties resided together after separation or divorce. 104 A.L.R.5th 605.

Right to credit against child support arrearages for time child spent in custody of noncustodial parent, other than for visitation or under court order, without custodial parent's approval. 108 A.L.R.5th 359.

Right to credit against child support

arrearages for time child lived in custody of noncustodial parent, other than for visitation, where custodial parent's approval was not in issue or was disputed by parties. 112 A.L.R.5th 185.

Right to credit on child support for health insurance, medical, dental, and orthodontic expenses paid for child's benefit while child is not living with obligor parent. 1 A.L.R.6th 493.

Right to credit on child support for con-

tributions to educational expenses of child while child is not living with obligor parent. 2 A.L.R.6th 439.

Right to credit on child support for contributions to travel expenses of child while child is not living with obligor parent. 3 A.L.R.6th 641.

Right to credit on child support for continued payments to custodial parent for child who has reached majority or otherwise become emancipated. 4 A.L.R.6th

531.

Retirement of husband as change of circumstances warranting modification of divorce decree – Conventional retirement at 65 years of age or older. 11 A.L.R.6th 125.

Laches or Acquiescence as Defense, So as to Bar Recovery of Arrearages of Permanent Alimony or Child Support. 22 A.L.R.7th Art. 1 (2017).

CASE NOTES

ANALYSIS

In General.

Agreements.

Contempt Power.

Determination of Income.

Equitable Estoppel.

Failure to Exercise Extended Visitation.

Judgment Interpretation.

Modification.

In General.

Ex-husband's claim that his ex-wife was barred by the compulsory-counterclaim provision of Ark. R. Civ. P. 13(a) from recovering the education expenses because she did not raise the issue during a 2002 contempt action ex-husband initiated was rejected as ex-husband was not filing a pleading and asserting a claim under Ark. R. Civ. P. 7 at that time but, rather, he was filing a motion asking the trial court to enforce a previous order; Ark. R. Civ. P. 13(a) did not apply and, when his ex-wife filed a counter-petition in May 2004 to enforce the decree and recover tuition and education expenses, she was not barred by the compulsory-counterclaim rule because she did not raise the education-expense issue in response to the ex-husband's first petition filed in 2002. *Morsy v. Deloney*, 92 Ark. App. 383, 214 S.W.3d 285 (2005).

Trial court properly dismissed client's malpractice action even though the attorney committed malpractice by failing to perfect client's appeal of the trial court's child-support award as the client would not have prevailed on appeal because the trial court properly adhered to guidelines of Arkansas Family Support Chart when it deviated from presumptive amount; although the trial court was required to

consider the guidelines, the court did not have to use the chart amount where the circumstances of the parties indicated another amount would be more appropriate. *Davis v. Bland*, 367 Ark. 210, 238 S.W.3d 924 (2006).

Even though children injured in an explosion had a trust worth about 1 million dollars that met their needs, the father was still ordered to pay child support because this was not a substitute for his income; the father had a legal and moral duty to support his children, even though they had the property to do so themselves. *Lee v. Lee*, 95 Ark. App. 69, 233 S.W.3d 698 (2006).

Circuit court did not err in determining that the father was not entitled to receive a credit for years of overpayment to the child-support registry against four months of non-payment; the circuit court did not err in its finding of contempt for failure to pay child support, as well as its assessment of child-support arrearages. *Guffey v. Counts*, 2009 Ark. 410 (2009).

While most parents willingly assist their adult children in obtaining a higher education which to many appears to be increasingly necessary in today's fast-changing world, any duty to do so is a moral rather than a legal one, and parents who remain married while their children attend college may continue supporting their children for a period of years past the age of majority, but such support may be conditional or may be withdrawn at anytime, and no one may bring an action to enforce continued payments; it would be fundamentally unfair for courts to enforce these moral obligations of support only against divorced parents while other parents may do as they choose. *Mainerich v. Wilson*, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

Agreements.

Where a mother and the Office of Child Support Enforcement entered into a proposed agreement regarding child support arrearages, it was not error to refuse to follow the agreement, because the trial court was not bound by an independent agreement concerning child support and the trial court retained jurisdiction over child support. *Roark v. Office of Child Support Enforcement*, 101 Ark. App. 382, 278 S.W.3d 114 (2008).

Contempt Power.

Although the parties had agreed to each pay one-half the college expenses of any child that chose to attend college, where the mother later declined to pay her half, the trial judge clearly erred in holding the mother in contempt because she demonstrated by more than a preponderance of the evidence that her failure to reimburse the father for college expenses was not due to "willful obstinacy" but financial inability coupled with ill health; also relevant and material were the mother's assertions that their adult daughter's illness required her to take care of their granddaughter and assume some of those financial responsibilities, and the trial judge's exclusion of the latter evidence unfairly interfered with the mother's defense and constituted an abuse of discretion. *Aswell v. Aswell*, 88 Ark. App. 115, 195 S.W.3d 365 (2004).

Determination of Income.

A noncustodial father was not entitled to a reduction of his child support obligation since he failed to meet his burden to show a change in circumstances where he did not supply sufficient information to enable the chancellor to determine his income. *Woodson v. Johnson*, 63 Ark. App. 192, 975 S.W.2d 880 (1998).

Trial court did not err by refusing to require a former husband to pay a certain amount of net income for child support because there was no meeting of the minds regarding the definition of the term "net income" when the agreement was made; moreover, such an independent agreement was not binding on the trial court. *Adametz v. Adametz*, 85 Ark. App. 401, 155 S.W.3d 695 (2004).

Equitable Estoppel.

In a child support arrearages case, the defense of equitable estoppel applied be-

cause the mother initiated a conversation regarding father's relinquishment of his parental rights in exchange for waiving child support, the father relied on the mother's conduct to his detriment, and he was unaware that his obligation was still accruing. *Chitwood v. Chitwood*, 92 Ark. App. 129, 211 S.W.3d 547 (2005).

Mother was not estopped from seeking child support because (1) the father could not rely on the mother's promise not to seek child support in exchange for his promise not to challenge paternity as the father's duty of child support could not be bartered away permanently to the detriment of the child; and (2) the trial court always retained jurisdiction and authority over child support as a matter of public policy and, no matter what an independent contract stated, either party had the right to request modification of a child-support award. *McGee v. McGee*, 100 Ark. App. 1, 262 S.W.3d 622 (2007).

Order relieving a mother of her past-due child support obligation was upheld where the trial court found the existence of an agreement that the father would forego child support in exchange for the maternal grandparents' help with the children's expenses; the father only attempted to repudiate the arrangement after the maternal grandparents had fully performed. *Wilhelms v. Sexton*, 102 Ark. App. 46, 280 S.W.3d 565 (2008).

Failure to Exercise Extended Visitation.

When a noncustodial parent failed to exercise extended visitation under the provisions of a per curiam order, the custodial parent was not entitled to be compensated accordingly. *Carlton v. Carlton*, 316 Ark. 618, 873 S.W.2d 801 (1994).

Trial court did not err in holding that a husband was responsible for \$9,140 in child support arrearages because although it was clear that the husband did not receive his visitation on a regular basis, he did not return to the trial court to attempt to terminate his child support obligation. Both the husband's former wife and one of his children testified that he made no effort to contact the child for visitation, a fact that he partly admitted. *Lyons v. McInvale*, 98 Ark. App. 433, 256 S.W.3d 512 (2007).

Judgment Interpretation.

In a dispute involving a child support order, a trial court's interpretation of its

own decree was clearly erroneous because the decree did not provide that a father was subject to automatic increases of child support payments every year past 2000. *Brandt v. Brandt*, 103 Ark. App. 66, 286 S.W.3d 202 (2008).

Modification.

Where evidence showed that the parties' oldest child had graduated from high school, had reached the age of majority, and was no longer living under the same roof as the mother, the father made a *prima facie* showing of a change of circumstances sufficient to warrant modification of child support. *Harris v. Harris*, 82 Ark. App. 321, 107 S.W.3d 897 (2003).

In entering an order to modify child support, the trial court properly considered that the mother, who was also a physician and a farm owner, had a negative income during a certain time; however, the trial court erroneously failed to consider in its support calculations that beginning the following year, the mother's income was positive. *Huey v. Huey*, 96 Ark. App. 188, 239 S.W.3d 547 (2006).

Where the evidence showed that the father made about \$67,000 per year, but was unable to work full time due to child care obligations, a child support increase in the amount of \$173 per week, plus arrearages, was proper because the child-support chart was referenced, testimony regarding the father's weekly income was heard, and documentary evidence was considered. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).

Alleged errors relating to the calculation of the income of former spouses in modifying child support were not reversible because the wife invited the trial court to rely on and use certain documents, she failed to challenge an alternative basis for a trial court's decision not to include a distribution in her former husband's income, and she failed to offer a developed argument or citation to authority, except in a general nature. *Parker v. Parker*, 97 Ark. App. 298, 248 S.W.3d 523 (2007).

Trial court erred in modifying a divorce decree by ordering the payment of child support from the proceeds of a settlement that the wife was to receive as part of a class-action lawsuit where the amount of money the wife would receive as a result of the settlement, and when she would

receive it, were unknown; the issue was not yet ripe. *Stuart v. Stuart*, 99 Ark. App. 358, 260 S.W.3d 740 (2007).

Over 12 years had passed since the divorce decree awarding no child support was entered; in that time, the mother testified that the children had gotten older, played ball, had medical expenses, and quickly outgrew clothing and shoes. There were sufficient changed circumstances to warrant an increase in child support; thus, the trial court did not err in modifying the father's child-support obligation. *McGee v. McGee*, 100 Ark. App. 1, 262 S.W.3d 622 (2007).

Where a temporary order of child support was issued while divorce proceedings were pending, the father's child support obligation was lowered when the final divorce decree was entered, the payroll coordinator for the father's employer continued to withhold the higher amount to satisfy the father's support obligation, and the father did not notice that more was being withheld than he was required to pay for two years, which resulted in an overpayment exceeding \$15,000, the circuit court did not err in denying the father's motion to modify his support obligation and to compel reimbursement of the overpayment and in concluding that the father's payment was voluntary because the father was aware of the terms of his divorce decree and was in a superior position to know how much child support was being withheld from his check, because the execution of the wage assignment was within his control, and because it was the father's responsibility to verify that he was making child support payments in the correct amount. *White v. White*, 2009 Ark. App. 790 (2009).

Trial court erred in considering a father's financial assistance to his adult daughter and in its method of calculating support because it was error to consider funds the father expended to support the daughter while she was obtaining a higher education as a factor to deviate from the presumptive amount of child support without evidence that the daughter was legally dependent; the trial court erred by merely taking the child support due for two children under the family support chart and dividing the amount by two because no evidence supported the finding that the daughter was dependent, and thus, the presumptively correct chart

amount was the amount for one child. **Cited:** Valentine v. Valentine, 2010 Mainerich v. Wilson, 2010 Ark. App. 325, Ark. App. 259, 377 S.W.3d 387 (2010). 373 S.W.3d 923 (2010).

9-14-107. Change in payor income warranting modification — Definition.

(a)(1) A change in gross income of the payor in an amount equal to or more than twenty percent (20%) or more than one hundred dollars (\$100) per month shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions.

(2)(A)(i) Any time a court orders child support, the court shall order the noncustodial parent to provide proof of income for the previous calendar year to:

(a)(1) The custodial parent.

(2) The court shall also order the noncustodial parent to provide proof of income for a previous calendar year whenever requested in writing by certified mail by the custodial parent, but not more than one (1) time a year; and

(b) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, when applicable.

(ii) Whenever a custodial parent requests in writing that the noncustodial parent provide proof of income, the noncustodial parent shall respond by certified mail within fifteen (15) days.

(B) If the noncustodial parent fails to provide proof of income as directed by the court or fails to respond to a written request for proof of income, the noncustodial parent may be subject to contempt of court.

(C) If a custodial parent or the office has to petition the court to obtain the information, the custodial parent or the office may be entitled to recover costs and a reasonable attorney's fee.

(D) Once notified of an increase, the office shall file a motion within thirty (30) days for modification of child support.

(E)(i) All income information received by the office shall be used only as permitted and required by law.

(ii) All income information received by the custodial parent shall be treated confidentially and used for child support purposes only.

(3)(A) The incarceration of a parent shall not be treated as voluntary unemployment for purposes of determining a reasonable amount of support either initially or upon review.

(B) As used in subdivision (a)(3)(A) of this section, "incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least one hundred eighty (180) days, excluding credit for time served before sentencing.

(b) A change in a parent's ability to provide health insurance may constitute a material change of circumstances sufficient to petition the

court for modification of child support according to the family support chart.

(c)(1) The office shall, at least each three (3) years, without regard to a material change of circumstances, review cases in its enforcement caseload where there has been an assignment under Title IV-A of the Social Security Act or upon the request of either parent and petition for adjustment if appropriate.

(2) An inconsistency between the existing child support award and the amount of child support that results from application of the family support chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions unless:

(A) The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section;

(B) The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guidelines amount; or

(C) The inconsistency is due solely to a revision of the family support chart.

(d) Any modification of a child support order that is based on a change in gross income of the noncustodial parent shall be effective as of the date of filing a motion for increase or decrease in child support unless otherwise ordered by the court.

(e) When a person is ordered by a court of record to pay for the support of his or her children, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, may order periodic drafts of his or her accounts at a financial institution to deduct moneys due or payable for child support in amounts the court may find to be necessary to comply with its order for the support of the children.

History. Acts 1991, No. 367, §§ 1, 2; 1993, No. 1242, § 12; 1995, No. 1184, § 39; 1997, No. 1296, § 15; 2001, No. 1248, § 4; 2003, No. 337, § 1; 2005, No. 1962, § 19; 2007, No. 713, § 1; 2009, No. 551, §§ 1, 2; 2015, No. 565, § 2; 2019, No. 904, §§ 4, 5.

Amendments. The 2015 amendment deleted (b)(2) and (3) and redesignated

former (b)(1) as (b); and substituted “may” for “as defined in subdivision (b)(2) of this section shall” in present (b).

The 2019 amendment added (a)(3) and (c)(2)(C).

U.S. Code. Title IV-A of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 601 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Proof of Income, 26 U. Ark. Little Rock L. Rev. 407.

CASE NOTES

ANALYSIS

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Appellate Review.

Even though the dismissal of father's motion to decrease his child support obligation was without prejudice, his appeal from that order was from a final appealable order because of the significance of filing dates to child support motions; because retroactive child support may be awarded from the time a petition to modify is filed, the father would lose that benefit with any new motion filed. *Cross v. Cross*, 2020 Ark. App. 110, 596 S.W.3d 528 (2020).

Circuit court erred in dismissing a father's motion to decrease his child support obligation for lack of jurisdiction due to the pendency of a previous child support order before the court of appeals. The issues raised in the first appeal (which related to service of the motion, the correct retroactive date, and whether the father was entitled to a downward deviation from the chart amount) all related to the circumstances as they existed when the mother filed her motion for modification, and the issues raised in the father's subsequent motion related to the allegedly changed circumstances that existed when he filed his motion and was a matter supplemental to those on appeal. *Cross v. Cross*, 2020 Ark. App. 110, 596 S.W.3d 528 (2020).

The rule that a circuit court loses jurisdiction over the parties and subject matter once the record is lodged on appeal is not invariably applied in support cases; further, the rule applies only to matters necessarily or directly involved in the matter under review, and matters that are

collateral or supplemental to those on appeal are left within the jurisdiction and control of the circuit court. *Cross v. Cross*, 2020 Ark. App. 110, 596 S.W.3d 528 (2020).

Change of Circumstances Found.

There was a statutory change of circumstances in the case under subsection (c) of this section, because when applying the family support chart to the mother's income the result was obviously something greater than zero, the father could not forever waive his children's right to child support, and there was no legal basis why the mother should not now be ordered to pay support for her children, who were in the father's primary custody; neither of the two exceptions set forth in subsection (c) of this section was applicable. *Office of Child Support Enforcement v. Burroughs*, 100 Ark. App. 128, 265 S.W.3d 132 (2007).

Finding a material change in circumstances warranting a reduction in the husband's child support obligation was not clear error where the circuit court found the husband's testimony as to why he left his job and the amount he would have made had he stayed credible and constituted reasonable cause for the departure. *Langston v. Brown*, 2016 Ark. App. 535, 506 S.W.3d 261 (2016).

There is no rule that voluntarily leaving a job cannot be a basis for a material change of circumstances to support a reduction of one's child support obligation; such a determination is fact- and case-specific. Better stated, voluntarily leaving a job may be a basis for a finding of a material change in circumstances as long as there is a reasonable cause for the departure. *Langston v. Brown*, 2016 Ark. App. 535, 506 S.W.3d 261 (2016).

Trial court did not clearly err in finding that a material change in circumstances had occurred to modify child support; the divorce decree deviated from the child-support guidelines without any explanation and although the father had been ordered to pay childcare expenses in the decree, there were no childcare expenses with both children now in school. *Morgan v. Morgan*, 2018 Ark. App. 316, 552 S.W.3d 10 (2018).

Circuit court did not abuse its discretion in using the Arkansas Family Support

Chart to determine the correct amount of child support given the mother's testimony that the children had missed extra-curricular opportunities and one child needed braces. *Cross v. Cross*, 2019 Ark. App. 100, 572 S.W.3d 407 (2019).

Circuit court did not err in modifying a father's child support because the inconsistency between the chart amount of the mother's child support and the agreed order without supporting reasons constituted a material change in circumstances sufficient to petition for modification of child support under this section. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

Change of Circumstances Not Found.

Self-employed father proved no material change in circumstances warranting a child support reduction because (1) the court could not find if the father's income had changed since a certain year, as no direct evidence of that income was ever before the court, and a prior agreed order was not circumstantial evidence of that income, and (2) income calculations did not properly account for the retained earnings of the father's subchapter S corporation or for other available income. *Troutman v. Troutman*, 2017 Ark. 139, 516 S.W.3d 733 (2017).

Deviation from Chart.

Where the original support order was \$40 per week, but the family-support chart called for \$138 per week, father's support was properly increased to the higher amount under subsection (c) of this section even though his income had not increased, as he did not prove that the original support order's deviation from the chart was based on his agreement with the mother not to seek visitation. *Tucker v. Tucker*, 74 Ark. App. 316, 49 S.W.3d 145 (2001).

Trial court erred in reducing appellee mother's child support obligation to \$24 per week without considering estimates of her income for the first quarter of 2003, as required by Ark. Sup. Ct. Admin. Order No. 10; the evidence showed that appellee had from \$7,167.32 to \$8,441.32 per month in income during the first quarter of 2003 and, at that level, child support should have been set at \$250.02 weekly. *Huey v. Huey*, 90 Ark. App. 98, 204 S.W.3d 92 (2005).

Trial court's ruling that a mother had waived her adult daughter's child support arrearages was reversed and remanded because on the record, the Court of Appeals could not determine whether the trial court made the required judicial investigation into the compromise agreement between the mother and father prior to its acceptance, and the trial court's failure to make that inquiry would void the judgment as to the compromise; on the record, the Court of Appeals could not determine two facts essential to the disposition of the issue regarding child support arrearage: (1) whether the requisite judicial inquiry had been undertaken to independently evaluate the compromise and its benefits to the minor, and (2) whether the inquiry had led to the judicial determination that the compromise regarding support was in fact in the minor's best interest. *Mainerich v. Wilson*, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

Trial court erred in considering a father's financial assistance to his adult daughter and in its method of calculating support because it was error to consider funds the father expended to support the daughter while she was obtaining a higher education as a factor to deviate from the presumptive amount of child support without evidence that the daughter was legally dependent; the trial court erred by merely taking the child support due for two children under the family support chart and dividing the amount by two because no evidence supported the finding that the daughter was dependent, and thus, the presumptively correct chart amount was the amount for one child. *Mainerich v. Wilson*, 2010 Ark. App. 325, 373 S.W.3d 923 (2010).

While there was no evidence that a father willfully failed to follow the trial court's child support orders, the record contained no specific written findings about the presumptive amount under the guidelines based upon the father's income or why the presumptive amount was unjust or inappropriate under subsection (c) of this section. *Stevenson v. Stevenson*, 2011 Ark. App. 552 (2011).

Disability.

Where parent was unemployed when her child support obligation was first set, her becoming unable to work did not represent a significant change warranting

termination of support; in fact, if parent had become unemployable rather than merely unemployed, there exists the possibility she may be entitled to monetary benefits that would not previously been available to her. *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996).

Employment Status.

Where parent was unemployed when her child support obligation was first set, her becoming unable to work did not represent a significant change warranting termination of support; in fact, if parent had become unemployable rather than merely unemployed, there exists the possibility she may be entitled to monetary benefits that would not previously been available to her. *Schwarz v. Moody*, 55 Ark. App. 6, 928 S.W.2d 800 (1996).

Findings Necessary.

When it ruled that any loss in income was due to the father's own actions, the trial court did not make a clear finding regarding whether a material change occurred warranting a modification of child support; thus, remand was required. *Williams v. Lofton*, 2018 Ark. App. 606, 569 S.W.3d 872 (2018).

Preservation for Review.

Evidence that was presented in the lower court raised, developed, and preserved the issue of the application of subdivision (c)(2) of this section to the case; although the father did not specifically raise subdivision (c)(2) to support his motion for modification of child support, the issue in the case—whether there was a material change of circumstances supporting the father's motion—was presented to the lower court and the evidence required to support the application of subdivision (c)(2) was developed at the hearing below and was undisputed. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

Prospective Award.

Trial court is not required to make findings if a child support award is made prospective, pursuant to subsection (d) of this section. *Cowell v. Long*, 2013 Ark. App. 311 (2013).

In a child support modification case, a trial court did not abuse its discretion by failing to award an increase retroactively; the trial court was not required to make

findings if the award was prospective, and the trial court was permitted to "otherwise order" the support to be paid prospectively. *Cowell v. Long*, 2013 Ark. App. 311 (2013).

Remand.

Evidence presented to the circuit court showed that the children were older and involved in more activities, and their needs and expenses were greater; it was not apparent from the record whether the circuit court found a material change of circumstances, and thus remand was required. *Johnson v. Young*, 2017 Ark. App. 132, 515 S.W.3d 159 (2017).

Retroactive Award.

Where custody petition was filed in 1992, the hearing was held in 1994, and the chancellor made a finding of the father's income as of January 1, 1993, there was no abuse of discretion in the chancellor's ordering support payments retroactive to January 1993. *Heflin v. Bell*, 52 Ark. App. 201, 916 S.W.2d 769 (1996).

Where father's tax returns were unreliable due to discrepancies in his testimony, a trial court did not err by using the net-worth method to determine his obligation since such was authorized under Ark. Sup. Ct. Admin. Order No. 10, § III.c.; however, the order should have been made retroactive to when the petition was filed. *Tucker v. Tucker*, 96 Ark. App. 194, 239 S.W.3d 532 (2006), *aff'd*, *Tucker v. Office of Child Support Enforcement*, 368 Ark. 481, 247 S.W.3d 485 (2007).

Refusal to make modification of child support retroactive to the date of the filing of the petition for modification was reversed and remanded with instructions to so as the reviewing court found that the circuit court clearly erred in finding that there was no evidence that enabled it to calculate father's income for the two-year period prior to the filing of the petition for modification. *Tucker v. Office of Child Support Enforcement*, 368 Ark. 481, 247 S.W.3d 485 (2007).

Trial court erred in ordered that a child support arrearage be placed into an interest-bearing account controlled by a father because there was no authority that would allow a court to order that a retroactive amount resulting from an increase in child support be placed in an interest-bearing account. *Gilbow v. Travis*, 2010 Ark. 9, 372 S.W.3d 319 (2010).

Because the trial court lacked authority to modify child support based on the April 2009 petition, the amount of payments made and owed had to be recalculated, and the modification could be retroactive only to the father's May 2, 2013 motion; the credit was reversed and the case was remanded to the trial court with instructions to apply the modification as of that date and determine any arrearage or overpayment. *Browning v. Browning*, 2015 Ark. App. 104, 455 S.W.3d 863 (2015).

Circuit court erred in awarding back child support for the full month in which the petition for modification was filed as the first motion was filed on the 16th of that month. As a result, the order was modified to have retroactive support begin on the 16th of the month the petition was filed. *Cross v. Cross*, 2019 Ark. App. 100, 572 S.W.3d 407 (2019).

Child support award was modified to begin when the father's motion to modify was filed because the circuit court abused its discretion when it awarded retroactive child support beyond the filing date of the father's motion to modify. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

—Not Retroactive.

Because the trial court specifically ordered that the support increase not be retroactive, and gave reasons for doing so, it did not abuse its discretion under subsection (d) of this section. *Riddick v. Harris*, 2016 Ark. App. 426, 501 S.W.3d 859 (2016).

Sufficient Change.

Although it does not compel a determination of changed circumstances, under subsection (a) of this section a change of ten percent (now twenty percent) in the payor's income can be sufficient to support such a finding. *Roland v. Roland*, 43 Ark. App. 60, 859 S.W.2d 654 (1993).

Under a prior version of this chapter, a change in the payor's income of ten percent (10%) was sufficient to support a determination of changed circumstances and an increase in child support pursuant to the chart; now, pursuant to subsection (a) of this section, the specified change in the payor's income does not necessarily support the determination but merely constitutes a material change of circumstances sufficient to allow the petition to

the court for its review and adjustment of child support. *Heflin v. Bell*, 52 Ark. App. 201, 916 S.W.2d 769 (1996); *Moreland v. Hortman*, 72 Ark. App. 363, 39 S.W.3d 23 (2001).

Where the court had before it evidence that appellee mother had experienced negative income for two years, the amount of child support she had been previously ordered to pay was inconsistent with her current negative income, pursuant to the Family Support Chart; this constituted a material change of circumstances justifying a reduction in the mother's child support obligation. *Huey v. Huey*, 90 Ark. App. 98, 204 S.W.3d 92 (2005).

Where father's unemployment benefits expired in March 2004, his petition to reduce his child support obligation in May 2004, in which his income was shown to have decreased from \$1000 per month to \$0 per month, showed a material change in circumstances; although father had unemployment benefits for a short time, the income situation changed materially in the ensuing months. *McKinney v. McKinney*, 94 Ark. App. 100, 226 S.W.3d 37 (2006).

Father failed to show that the expenses he sought to modify were not "in addition to" and independent of his child support obligation or that there had been a sufficient change in circumstances as he failed to provide the required financial documentation to support his claims of a decreased income level; further, father also failed to object to the trial court's imputation of his income at \$25,000 per year and the related increase in his child support obligation. *Martin v. Scharbor*, 95 Ark. App. 52, 233 S.W.3d 689 (2006).

Circuit court did not abuse its discretion in leaving the husband's support obligations the same where it carefully considered the needs of the wife and the parties' daughter and the husband's decreased ability to pay. *Bishop v. Bishop*, 98 Ark. App. 111, 250 S.W.3d 570 (2007).

Tax Record.

In a child support modification case, a trial court did not err by relying on a father's tax record in determining his monthly income when it determined that there was a material change of circumstances to support the modification under subdivision (a)(1) of this section; there was no need to consider the net-worth

approach. *Cowell v. Long*, 2013 Ark. App. 311 (2013).

Cited: *Weir v. Phillips*, 75 Ark. App. 208, 55 S.W.3d 804 (2001).

9-14-108. Transfer between local jurisdictions.

(a)(1) The court where the final adjudication of child support is rendered shall retain jurisdiction of all matters following the entry of the decree.

(2) If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court that entered the final adjudication to request that the case be transferred to another county.

(3)(A) The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

(B) If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

(b)(1) At the request of the person seeking to transfer the case to another judicial district, upon proper motion and affidavit, notice, and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of court in the judicial district where the case is being transferred.

(2) An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case to another judicial district.

(3) Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

(c) The circuit clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

History. Acts 1997, No. 1296, § 13; 1999, No. 1514, § 6.

No. 1514, § 5, former § 9-14-108, as enacted by Acts 1997, No. 1072, has been renumbered as § 9-14-110.

A.C.R.C. Notes. Pursuant to Acts 1999,

9-14-109. Automatic assignment of rights.

(a) By accepting public assistance for or on behalf of a dependent child, which public assistance is provided by the Department of Human Services under the Transitional Employment Assistance Program, i.e., Temporary Assistance for Needy Families Program, the recipient thereof shall be deemed to have assigned to the appropriate division of the Department of Human Services and the Office of Child Support

Enforcement of the Revenue Division of the Department of Finance and Administration any rights to child support from any other person as the recipient may have:

(1) In his or her own behalf or on behalf of any other family member for whom the recipient is receiving such assistance; and

(2) Accrued at the time such assistance, or any portion thereof, is accepted, to the extent possible under federal law.

(b) The appropriate division of the Department of Human Services shall give notice in writing to each applicant for such assistance. The notice shall state that acceptance of the assistance will invoke the provisions of subsection (a) of this section and will result in an automatic assignment under subsection (a) of this section.

(c) When a child is placed in the custody of the Department of Human Services, any right to support from any person on behalf of the child shall be deemed to have been assigned to the appropriate division of the Department of Human Services and the office for the period of time that the child remains in the custody of the state.

History. Acts 1997, No. 1296, § 14;
2001, No. 1248, § 5.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Moore, Child Limitations (If Any) Applies?, 19 U. Ark. Support Arrearages: What Statute of Little Rock L.J. 487.

9-14-110. Arkansas Registry of Child Support Orders — Definition.

(a) As used in this section, “child support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, that provides for monetary support, health care, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief.

(b)(1)(A) Not later than October 1, 1998, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration will establish and maintain an automated registry of child support orders to be known as the “Arkansas Registry of Child Support Orders”.

(B) The registry will contain abstracts of child support orders and other information on each child support case in the state established or modified on or after October 1, 1998.

(C) The registry will further contain abstracts of all child support orders for cases in which services are being provided by the Office of Child Support Enforcement pursuant to Title IV-D of the Social Security Act.

(2) Abstracts of child support orders and other information on each child support case will include information as required by the United States Department of Health and Human Services, as specified in federal regulations, including, but not limited to, names, Social Security numbers or other uniform identification numbers, and case identification numbers that will identify individuals who owe or are owed child support or on whose behalf the establishment of support obligations is sought and the name of the county in which the case is filed.

(3)(A) Each child support case in the registry for which services are being provided under Title IV-D of the Social Security Act will include the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, or late penalties and fees, that are due or overdue under the order, information on moneys collected and distributed on each case, the birthdate of any child for whom the order requires support, and the amount of any lien imposed with respect to the support order.

(B) Payment history information on Title IV-D child support cases maintained in the registry will be provided by the Office of Child Support Enforcement.

(c)(1) From time to time, as may be required, the Office of Child Support Enforcement will consult with the Administrative Office of the Courts to appropriately revise the statistical case data reporting system of the Administrative Office of the Courts in order to meet requirements of the registry.

(2) The Administrative Office of the Courts will advise all clerks of court or other court personnel responsible for completion of the case data reporting of any revised statistical reporting requirements.

(3) It is the specific intent of the General Assembly that the registry be established and maintained by modification to the case information reporting system currently administered through the Administrative Office of the Courts without imposing duplicate reporting requirements on the clerks of court.

(d)(1) The Office of Child Support Enforcement will have access to statistical case information compiled by the Administrative Office of the Courts for the purpose of administering the registry.

(2) The cost of development and maintenance of the registry will be the responsibility of the Office of Child Support Enforcement.

(3) The cost of collection, storage, and retrieval of data for the registry will be the responsibility of the Office of Child Support Enforcement.

History. Acts 1997, No. 1072, § 1; 1999, No. 1514, § 4.

A.C.R.C. Notes. Pursuant to Acts 1999, No. 1514, § 5, former § 9-14-108, as enacted by Acts 1997, No. 1072, has been

renumbered as this section.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

SUBCHAPTER 2 — ENFORCEMENT GENERALLY

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- 9-14-220. Income withholding — Persons subject to order — Ground to contest order.
- 9-14-221. Income withholding — When orders take effect — Notice — Costs.
- 9-14-222. Income withholding — Notice to payor — Costs.
- 9-14-223. Income withholding — Objection of payor.
- 9-14-224. Income withholding — Duties of payor.
- 9-14-225. Income withholding — Liability of payor — Distribution of moneys.
- 9-14-226. Income withholding — Prohibition of disciplinary action against employee — Penalty.
- 9-14-227. Income withholding — Administrative costs — Applicability to unemployment compensation and workers' compensation.
- 9-14-228. Income withholding — Procedures for payor.
- 9-14-229. Income withholding — Termination of order — Notice to payor.
- 9-14-230. Decree as lien on real property.
- 9-14-231. Overdue support as lien on personal property.
- 9-14-232. Healthcare coverage.
- 9-14-233. Arrearages — Interest and attorney's fees — Work activities and incarceration.
- 9-14-234. Arrearages — Redirection of child support — Finality of judgment — Definition.
- 9-14-235. Arrearages — Payment after duty to support ceases — Definition.
- 9-14-236. Arrearages — Child support limited — Limitations period — Definitions.
- 9-14-237. Expiration of child support obligation.
- 9-14-238. Collection of support obligations.
- 9-14-239. Suspension of license for failure to pay child support — Definitions.
- 9-14-240. Expiration of income withholding.

SECTION.

9-14-241. Referrals for criminal prosecution.

SECTION.

9-14-242. Report of nonsupport payments.

Cross References. Alimony and child support — bond — method of payment, § 9-12-312.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Maintenance and attorney's fees, § 9-12-309.

Modification of allowance for alimony and maintenance, § 9-12-314.

Effective Dates. Acts 1985, No. 989, § 6: Aug. 1, 1985.

Acts 1987, No. 524, § 4: Aug. 1, 1987.

Acts 1989, No. 383, § 5: Mar. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the recent court interpretations of support law for minor children have led to lack of uniformity in collection and enforcement and that it is in the best interests of the citizens of this state that all persons financially able to do so should contribute to the support of their minor child. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health and welfare, shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 948, § 10: Mar. 27, 1989, except §§ 1, 2, and 5 effective Oct. 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of

this act to become effective October 1, 1989."

Acts 1991, No. 301, § 6: Mar. 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children in this state; that the smooth transition from current requirements to those of the act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 542, § 11: Mar. 14, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that a recent court decision has led to uncertainty in the area of immunity under existing Arkansas Code provisions; that to clarify such provisions will allow those persons to avoid needless legal expenses resulting from the possible misinterpretation of the law. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 870, § 6: Mar. 29, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1095, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly of the State of Arkansas that the effectiveness of this act on July 1, 1991, is essential to the operation of the child support collection system in this state and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 396, § 7: Mar. 9, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the best interests of the people of the State of Arkansas that child support be collected and enforced in the most expedient manner for all children of this state; that a smooth transition from current requirements to those of this Act requires that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 468, § 9: Mar. 12, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that currently one in four children in the United States grows up in a single parent household and that millions of these children fail to receive the financial support that they are owed; that this financial support is crucial to sustaining family life and often to averting outright poverty; that children whose parents live in different states suffer for the most since a conflict between jurisdictions can often stand as a serious impediment to the enforcement of a child support order; that this act provides for one-state control of a case and for a clear and efficient method of interstate case processing; and that this act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval."

Acts 1993, No. 927, § 5: Apr. 7, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that it is in the best interests of the people of the State of Arkansas that the role of attorneys employed by the Department of Human Services or the Child Support Enforcement Unit or their contractors be clarified, and that a smooth transition from current requirements of law to those of this Act requires that the provisions become effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 1249, § 6: Apr. 20, 1993. Emergency clause provided: "The General Assembly finds that in order to meet the expedited process requirements pursuant to 45 CFR 303.101 and to implement and transfer the Child Support Enforcement Unit from Department of Human Services to the Department of Finance and Administration, it is imperative that this act be given immediate effect so that federal funding is not jeopardized. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1994 (1st Ex. Sess.), No. 5, § 7: Mar. 4, 1994. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that Arkansas law governing immediate income withholding does not conform with current federal requirements set forth in Title IV-D of the Social Security Act and implementing regulations; that failure to immediately remedy the law by legislative action will place Title IV-D and Aid to Families With Dependent Children funding in jeopardy. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1064, § 6: Apr. 10, 1995. Emergency clause provided: "It is hereby found and determined by the General As-

sembly that it is in the best interests of the people of the state of Arkansas that child support orders be enforced and that child support collected in the most expedient manner and that a smooth transition from current requirements to those of this act require that such provisions become effective immediately upon passage and approval of this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2019, No. 904, § 14: Jan. 1, 2020.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

Sullivan, The Need for a Business or Payroll Records Affidavit for Use in Child

Support Matters, 11 U. Ark. Little Rock L.J. 651.

Survey, Civil Procedure, 12 U. Ark. Little Rock L.J. 603.

9-14-201. Definitions.

As used in this Code:

- (1)(A) “Accrued arrearage” means a delinquency that is past due and unpaid and owed under a court order or an order of an administrative process established under state law for support of any child or children.

(B) “Accrued arrearage” may include past due support that has been reduced to a judgment if the support obligation under the order has not been terminated;
- (2) “Child support order” or “support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, that provides for monetary support, health care, including health insurance or cash medical support, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief;
- (3) “Court or its representative” means the circuit court of this state or a similar district court of another state when the context so requires, a court official of the circuit court, or the state or local child support enforcement attorney operating pursuant to an agreement with the court in cases related to Title IV-D of the Social Security Act;

(4)(A) “Income” means any periodic form of payment due to an individual, regardless of the source, including wages, salaries, commissions, bonuses, workers’ compensation, disability, payments pursuant to a pension or retirement program, and interest.

(B) The definition of “income” may be expanded by the Supreme Court from time to time in Supreme Court Administrative Order Number 10 — Arkansas Child Support Guidelines;

(5) “Lump-sum payment” means any:

(A) Form of income paid to an individual at other than regular or periodic intervals; or

(B) Payment regardless of frequency that is dependent upon meeting a condition precedent, including without limitation:

(i) The performance of a contract;

(ii) A job performance standard or quota;

(iii) The liquidation of unused sick or vacation pay or leave;

(iv) The settlement of a claim; or

(v) An award for length of service;

(6) “Net lump-sum payment” means the entire lump-sum payment less any amount required by law to be withheld;

(7) “Noncustodial parent” means a natural or adoptive parent who does not reside with his or her dependent child;

(8) “Notice” means any form of personal service authorized under Arkansas law;

(9) “Overdue support” means a delinquency pursuant to an obligation created under a court decree, order, or judgment or an order of an administrative process established under the laws of another state for the support and maintenance of a minor child;

(10) “Past due support” means the total amount of support determined under a court order established under state law, that remains unpaid; and

(11)(A) “Payor” means an employer, person, general contractor, independent contractor, subcontractor, or legal entity that has or may have in the future in its possession moneys, income, periodic earnings, or a lump-sum payment due the noncustodial parent.

(B) “Payor” shall include all agencies, boards, commissions, institutions, and other instrumentalities of the United States Government and the State of Arkansas and all cities of the first class, cities of the second class, incorporated towns, and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts.

History. Acts 1985, No. 989, § 6; A.S.A. 1947, § 34-1224; Acts 1987, No. 719, § 1; 1997, No. 1296, § 16; 1999, No. 1514, § 7; 2007, No. 713, § 2; 2009, No. 551, § 3.

Meaning of “this Code”. See § 1-2-113(b).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

CASE NOTES

Income.

The chancellor erred when he ordered the husband/father to pay child support based solely on his income as a fireman; notwithstanding that his regular work week was 56 hours, the husband/father should have been required to pay child support based on income from part-time employment for his father’s construction company and the National Guard. *Office of Child Support Enforcement v. Longnecker*, 67 Ark. App. 215, 977 S.W.2d 455 (1999).

Gambling proceeds were properly included as income for purposes of calculating child support but the true expendable or disposable income could only be arrived at by crediting gambling losses against those proceeds to the extent of the win-

nings. *McWhorter v. McWhorter*, 346 Ark. 475, 58 S.W.3d 840 (2001).

Bonus received by father fell within the definition of income for purposes of child support. *Paschal v. Paschal*, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

Considering that the definition of income is intentionally broad and designed to encompass the widest range of sources for the support of minor children, the trial court abused its discretion in failing to either include certain bonus amounts and employer contributions in the father’s income calculation or explain why these amounts should not be included. *Riddick v. Harris*, 2016 Ark. App. 426, 501 S.W.3d 859 (2016).

Cited: *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

9-14-202. Exclusivity of remedies.

The remedies provided in this subchapter shall not be exclusive of other remedies presently existing.

History. Acts 1985, No. 989, § 32; A.S.A. 1947, § 34-1250.

CASE NOTES

In General.

Tennessee court’s order that wife was entitled to \$25,000 of husband’s settlement funds did not constitute an election of remedies that precluded her use of garnishment to collect money belonging to husband; an order for child-support arrearages is a final judgment subject to garnishment or execution until the order is modified or otherwise set aside, and the

fact that an order also provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collecting the arrearage. *Sears v. Burkeen*, 96 Ark. App. 13, 237 S.W.3d 521 (2006).

Cited: *Stewart v. Norment*, 328 Ark. 133, 941 S.W.2d 419 (1997); *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

9-14-203. [Superseded.]

A.C.R.C. Notes. Former § 9-14-203 was renumbered and merged with § 25-10-118. That section has been deemed to

be superseded by current § 25-10-118. Current § 25-10-118 is derived from Acts 1989 (1st Ex. Sess.), No. 44, § 12, and Acts

1995, No. 1184, § 35.

9-14-204. Hearings for enforcement of support orders.

(a)(1) Hearings in all child support cases and paternity cases brought pursuant to Title IV-D of the Social Security Act shall be heard within a reasonable period of time following service of process in each county in the state as defined in this section.

(2) In each of the seventy-five (75) counties of this state, the circuit judge or judges of the judicial district for the county may designate at least one (1) day per month, and shall designate additional days each month when expedited process is not met in the preceding quarter, in each county to docket and hear matters concerning the establishment and enforcement of support orders and paternity. These dates shall be publicized in the court calendar for the judicial district each calendar year, clearly noting the county and time of day the court shall commence to sit on these matters.

(3)(A) In addition, in all actions in which delinquency or other support-related noncompliance has been identified, cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of delinquency or the location of the noncustodial parent by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, whichever is later, to the time of disposition within the following time periods within each judicial district:

(i) No more than thirty (30) calendar days, if service of process is not needed; or

(ii) In cases in which service of process is required, the circuit judge or judges of a judicial district shall hear and dispose of seventy-five percent (75%) of all Title IV-D cases within forty-five (45) days after filing when service is obtained. However, when there is a need for relocation of the noncustodial parent in order to achieve service, the forty-five-day time period shall not commence until the filing of the court's last order to appear and show cause or subsequent other pleading or order necessary to proceed with service.

(B) In addition, in all Title IV-D actions:

(i) The sheriff of the county in which the case is filed shall use diligent efforts to obtain service of process on the noncustodial parent within ten (10) days from the date of a service request and, if service of process is not accomplished within ten (10) days, the sheriff shall return the service papers to the requesting party and note specifically the reasons for nonservice. The return shall be filed with the circuit clerk within eleven (11) days of the request for service whether the return is based on service or nonservice; and

(ii) Pursuant to § 16-20-101, the clerk of the court shall file or docket all Title IV-D cases, pleadings, and orders on the date received, but no later than the close of business the following business day after the cases, pleadings, or orders are received in the clerk's office. Filed cases, pleadings, orders, or court documents in all Title IV-D

cases shall be returned or made available to the filing party immediately thereafter.

(C)(i) All actions to establish paternity and support obligations in cases brought pursuant to Title IV-D of the Social Security Act shall be completed from the time of service to the time of disposition within the following time periods within each judicial district:

(a) Seventy-five percent (75%) in six (6) months; and

(b) Ninety percent (90%) in twelve (12) months.

(ii) When calculating these rates of disposition:

(a) The percentages will be based upon a comparison of all disposed cases to the total of all filed cases for the preceding quarter within each judicial district that have been brought pursuant to Title IV-D of the Social Security Act; and

(b) In any jurisdiction in which twenty (20) or fewer Title IV-D cases have been filed during the preceding quarter, when applying the percentages set forth in subdivision (a)(3)(C)(i) of this section, the next lowest whole number will be utilized for purposes of the measurement of compliance.

(D) These calculations will be for the quarter ending April 1, 1995, and each three (3) months thereafter.

(b)(1)(A) The circuit judge or judges of a judicial district shall provide for expedited support and paternity hearings in each county of the district.

(B) The Chief Justice of the Supreme Court shall direct the redistribution of caseload assignments or appoint an additional circuit judge or judges to hear Title IV-D cases and assist the county or judicial district and to serve in accordance with this section, if necessary, to meet the time requirements for processing Title IV-D cases.

(2)(A) Upon agreement of the circuit judges and clerks in the counties selected by the Office of Child Support Enforcement, the Office of Child Support Enforcement shall designate up to ten (10) counties of various populations, geographic locations, and economic development for test purposes and to conduct demonstration projects for expedited process to determine the feasibility of implementing innovative policies, procedures, practices, and techniques, including, but not limited to, a quasijudicial process, in the establishment of paternity, child support, and enforcement of child support orders pursuant to Title IV-D of the Social Security Act.

(B) The Office of Child Support Enforcement shall notify and obtain the agreement of all affected judges and clerks in each of the designated counties of their selection thirty (30) days prior to implementation of the demonstration project.

(C) Such demonstration projects shall automatically terminate by operation of law on April 1, 2001, or may be extended upon application by the Office of Child Support Enforcement and the consent of the Governor.

(c) The compensation to be allowed a circuit judge appointed under this section shall be as prescribed by current law for appointed circuit judges.

(d)(1) The appointed circuit judge shall have the same authority and power as a circuit judge to issue any and all process in conducting hearings and other proceedings in accordance with this section.

(2) In addition, the appointed circuit judge shall have those powers as other judges under state and federal law and Title IV-D of the Social Security Act.

(e) The Chief Justice of the Supreme Court may recall from retirement a circuit judge and appoint same pursuant to this section to assist the state in meeting the required time frames noted in this section.

(f) The Office of Child Support Enforcement shall furnish to the Administrative Office of the Courts caseload information and data regarding the Title IV-D cases filed by the attorneys for the State of Arkansas.

History. Acts 1985, No. 989, § 19; 1986 (2nd Ex. Sess.), No. 15, § 1; A.S.A. 1947, § 34-1237; Acts 1987, No. 316, § 1; 1987 (1st Ex. Sess.), No. 33, § 2; 1991, No. 1095, § 2; 1995, No. 1064, § 1; 1997, No. 1296, § 17.

A.C.R.C. Notes. With respect to jurisdiction over other support proceedings, see also § 9-27-306.

U.S. Code. Title IV-D of the Social

Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq. The Federal Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, are codified, in pertinent part, as 42 U.S.C. § 666.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

9-14-205. Information required in support cases.

(a) In all cases in which the support and care of any child or children are involved, it shall be the duty of the plaintiff, defendant, custodial parent or physical custodian of the child, and the noncustodial parent to keep the clerk of the circuit court informed of his or her current address when a payment of support is directed to be paid through the registry of the court or keep the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration informed of his or her current address when a payment of support is directed to be paid through the Arkansas Child Support Clearinghouse.

(b)(1) Each party to any case in which the support and care of any child or children are involved shall file with the clerk of the circuit court and the Office of Child Support Enforcement and update, as appropriate, his or her name, Social Security number, residential and mailing address, telephone number, driver's license number, and the employer's name and address.

(2)(A) Information required pursuant to subdivision (b)(1) of this section shall be filed on a form provided by the Administrative Office of the Courts for that purpose.

(B) Forms filed with the clerk pursuant to subdivision (b)(1) of this section shall be:

(i) Maintained separately from the file of the case in which the support and care of any child or children are involved; and

(ii) Considered confidential and shall be open to inspection only by the following persons or entities:

(a) The Office of Child Support Enforcement;

(b) Attorneys of record for any party to the case, including, but not limited to, parties appearing pro se; and

(c) Any person or entity authorized by the circuit court in which the form is filed.

(c) In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the circuit court shall deem that state due process requirements for notice and service of process have been met with respect to the party upon delivery of written notice to the most recent residential address or employer address filed with the clerk of the circuit court pursuant to this subsection.

History. Acts 1985, No. 989, § 5; 1986 (2nd Ex. Sess.), No. 21, § 1; A.S.A. 1947, § 34-1223; Acts 1997, No. 1296, § 18; 1999, No. 1514, § 8; 2005, No. 1877, § 1.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

9-14-206. Office of Child Support Enforcement — Establishment — Plan — Program — Child support officers.

(a) There is established an organizational unit to be called the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration that shall administer the state plan for child support enforcement required under Title IV-D of the Social Security Act.

(b) The office is designated as the single public entity for the administration of income withholding of support payments in accordance with federal law.

(c)(1) The office is hereby designated as a law enforcement agency and may employ a child support officer in counties where the court grants at least two thousand five hundred (2,500) divorces each year to assist in the service of civil and criminal process and to enforce child support orders in this state.

(2) The officers shall be duly certified law enforcement officers pursuant to § 12-9-101 et seq. and shall have the same power to execute, serve, and return all lawful warrants including warrants of arrest issued by the State of Arkansas or any political subdivision thereof.

(d)(1)(A) Notwithstanding the provisions of subsection (c) of this section, in all counties in cases in which the sheriff has returned the service papers “non est”, the office may employ a child support officer or contract with a process server to assist in the service of civil and criminal process and to enforce child support orders in this state.

(B) A child support officer so employed shall be a duly certified law enforcement officer pursuant to § 12-9-101 et seq.

(2) Process servers contracting with the office or its agent shall be appointed by the circuit court pursuant to Rule 4 of the Arkansas Rules of Civil Procedure or Rule 6.3 of the Arkansas Rules of Criminal Procedure.

(3) A child support officer or process server shall have authority to execute, serve, and return all lawful warrants of arrest issued by the State of Arkansas or any political subdivision thereof.

(4) In any county wherein the sheriff chooses to transfer the responsibility of service of process in Title IV-D child support cases to the office, the office or its agent may employ a child support officer or contract with a process server as set forth in this subsection.

History. Acts 1985, No. 989, § 20; A.S.A. 1947, § 34-1238; Acts 1989, No. 808, § 1; 1989, No. 948, § 7; 1995, No. 1184, § 41; 1997, No. 1296, § 19.

U.S. Code. Title IV-D of the Social

Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

CASE NOTES

Tax Refund.

Where father was ordered to pay \$325 per month for child support and \$32.50 a month for arrearages, the state went outside the bounds of the chancellor's order

when it intercepted the father's IRS tax refund and reported him as delinquent to the credit bureau. Ark. Dep't of Human Servs. v. Brown, 35 Ark. App. 11, 811 S.W.2d 326 (1991).

9-14-207. Office of Child Support Enforcement — Administrator — Child support officers.

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to enter into cooperative agreements with county judges, court clerks, and prosecuting attorneys concerning the establishment, enforcement, collection, monitoring, and distribution of support obligations.

(b) The administrator is further authorized to appoint child support officers, in counties where the court grants at least two thousand five hundred (2,500) divorces each year, as law enforcement officers in the duties and obligations as set forth in § 9-14-206(c).

(c)(1) The administrator or his or her designee is authorized to issue an administrative subpoena for any financial or other information needed to establish, modify, or enforce a child support order to any individual or organization reasonably believed to have information on the financial resources of a parent or presumed or alleged father.

(2) A court may compel compliance with an administrative subpoena, impose penalties as authorized by § 9-14-208(c), and award attorney’s fees and costs to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration upon proof that an individual or organization failed to comply with the subpoena without cause.

(3) Subpoenas issued pursuant to the authority of the office shall be substantially in the following form:

“The State of Arkansas to the Sheriff of County: You are commanded to subpoena (name), regarding a proceeding before the Office of Child Support Enforcement to be held at (address) on the day of, 20....., and produce the following books, records, or other documents, to wit:, in the matter of (style of proceeding), being conducted under the authority of

WITNESS, my hand and seal this day of, 20..... .

.....
Administrator, Office of Child
Support Enforcement”.

(d)(1) Subpoenas provided for in this section shall be served in the manner as now provided by law and returned and a record made and kept by the office.

(2) The fees and mileage of officers serving the subpoenas and witnesses in answer to subpoenas shall be the same as now provided by law.

History. Acts 1985, No. 989, § 21; A.S.A. 1947, § 34-1239; Acts 1989, No. 808, § 2; 1997, No. 1296, § 20.	Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.
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9-14-208. Office of Child Support Enforcement — Powers to obtain information on noncustodial parent — Penalty — Immunity — Definitions.

(a) As used in this section:

(1) “Business” means any corporation, partnership, cable television company, association, individual, utility company that is organized privately, as a cooperative, or as a quasi-public entity, and labor or other organization maintaining an office, doing business, or having a registered agent in the State of Arkansas;

(2) “Financial entity” means any bank, trust company, savings and loan association, credit union, insurance company, or any corporation, association, partnership, or individual receiving or accepting money or its equivalent on deposit as a business in the State of Arkansas;

(3) "Information" means, but is not necessarily limited to, the following:

- (A) The full name of the noncustodial parent;
- (B) The Social Security number of the noncustodial parent;
- (C) The date of birth of the noncustodial parent;
- (D) The last known mailing and residential address of the noncustodial parent;
- (E) The amount of wages, salaries, earnings, or commissions earned by or paid to the noncustodial parent;
- (F) The number of dependents declared by the noncustodial parent on state and federal tax information and reporting forms;
- (G) The name of the company, policy numbers, and dependent coverage for any medical insurance carried by and on behalf of the noncustodial parent;
- (H) The name of the company, policy numbers, and the cash values, if any, of any life insurance policies or annuity contracts that are carried by or on behalf of or owned by the noncustodial parent; and
- (I) Any retirement benefits, pension plans, or stock purchase plans maintained on behalf of or owned by the noncustodial parent and the values thereof, employee contributions thereto, and the extent to which each benefit or plan is vested;

(4) "Noncustodial parent" means a natural or adoptive parent, including a putative father, who does not reside with his or her dependent child and against whom the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is enforcing or seeking to enforce a support obligation pursuant to a plan described in Title IV-D of the Social Security Act;

(5) "Office of Child Support Enforcement" means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or a local child support enforcement unit contracting under § 9-14-207 to establish and enforce support obligations; and

(6) "State or local government agency" means any department, board, bureau, commission, office, or other agency of this state or any local unit of government of this state.

(b)(1) For the purpose of locating and determining resources of noncustodial parents, the Office of Child Support Enforcement may request and receive information from the Federal Parent Locator Service, from available records in other states, territories, and the District of Columbia, from the records of all state agencies, and from businesses and financial entities.

(2) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may enter into cooperative agreements with other state agencies, businesses, or financial entities to provide direct online access to data information terminals, computers, or other electronic information systems.

(3) State and local government agencies, businesses, and financial entities shall provide information, if known or chronicled in their business records, notwithstanding any other provision of law making the information confidential.

(4) In addition, the Office of Child Support Enforcement, pursuant to an agreement with the United States Secretary of Health and Human Services, or his or her designee, may request and receive from the Federal Parent Locator Service information authorized under 42 U.S.C. § 653, for the purpose of determining the whereabouts of any parent or child. This information may be requested and received when it is to be used to locate the parent or child for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraining of a child or for the purpose of making or enforcing a child custody determination.

(c) Any business or financial entity that has received a request as provided by subsection (b) of this section from the Office of Child Support Enforcement or from a child support enforcement program administered by any other state under Title IV-D of the Social Security Act shall further cooperate with the Office of Child Support Enforcement or a requesting state in discovering, retrieving, and transmitting information contained in the business records that would be useful in locating absent parents or in establishing or enforcing child support orders on absent parents, and shall provide the requested information, or a statement that any or all of the requested information is not known or available to the business or financial entity. This shall be done within thirty (30) days of receipt of the request or the business or financial entity shall be liable for civil penalties of up to one hundred dollars (\$100) for each day after the thirty-day period in which it fails to provide the information so requested.

(d) Any business or financial entity, or any officer, agent, or employee of such an entity, participating in good faith and providing information requested under this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information to the Office of Child Support Enforcement or to a child support enforcement program administered by a requesting state.

(e)(1) Each financial entity, as defined herein, shall cooperate with the Office of Child Support Enforcement to develop, implement, and operate an electronic automated data match system, using automated data exchanges to the maximum extent feasible, in which each financial entity shall provide to the Office of Child Support Enforcement per calendar quarter the name, record address, Social Security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the financial entity and who owes past-due child support, as identified by the Office of Child Support Enforcement by name and Social Security number or other taxpayer identification number.

(2) For purposes of this subsection, the term “account” means a demand deposit account, checking or negotiable withdrawal order

account, savings account, time deposit account, or money market mutual fund account.

(3) The Office of Child Support Enforcement is authorized to pay a reasonable fee to a financial entity for conducting an automated data match, not to exceed the actual costs incurred by the financial entity.

(f) Pursuant to subsection (e) of this section, each financial entity, in response to a notice of lien or levy, shall encumber or surrender assets held by the financial entity on behalf of any noncustodial parent who is subject to a child support lien pursuant to judgment or by operation of law.

(g) In cases in which there is overdue child support and in an effort to seize assets to satisfy any current support obligation and the arrearage, the Office of Child Support Enforcement is authorized to:

(1) Intercept or seize periodic or lump-sum payments from:

(A) A state or local agency, including unemployment compensation, workers' compensation, or other benefits; and

(B) Judgments, settlements, prizes, and lotteries;

(2) Attach and seize assets of the obligated parent held in financial institutions;

(3) Attach public and private retirement funds, including any union retirement fund and railroad retirement; and

(4) Impose liens in accordance with subsection (f) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(h)(1) Such withholdings, intercepts, and seizures as set out in subsection (g) of this section may be initiated by the Office of Child Support Enforcement without obtaining a prior order from any court but must be carried out in full compliance with published administrative procedures, including due process safeguards, promulgated by the Office of Child Support Enforcement.

(2)(A) The rules shall require written notice to each parent and noncustodial parent to whom this section applies:

(i) That the withholding, intercept, or seizure has commenced; and

(ii) Of the right to an administrative hearing and the procedures to follow if the parent or noncustodial parent desires to contest the withholding, intercept, or seizure on the grounds that the withholding, intercept, or seizure is improper due to a mistake of fact.

(B) The notice to the parent and noncustodial parent pursuant to subdivision (h)(2)(A) of this section shall include the information provided to the employer, agency, or financial entity under subsection (e) of this section.

(i) Any financial entity, or any officer, agent, or employee of such entity, participating in good faith and providing information requested pursuant to subsection (e) of this section or encumbering or surrendering assets pursuant to subsection (f) or subsection (g) of this section, shall be immune from liability and suit for damages that might otherwise result from the release of the information or the encumbering or surrendering of the assets to the Office of Child Support Enforcement.

(j) Any information obtained under the provisions of this section shall become a business record of the Office of Child Support Enforcement, subject to the privacy safeguards set out in § 9-14-210(g)-(l).

History. Acts 1985, No. 989, § 25; A.S.A. 1947, § 34-1243; Acts 1991, No. 542, § 3; 1993, No. 928, § 1; 1993, No. 964, § 1; 1995, No. 1184, § 8; 1997, No. 1296, § 21; 1999, No. 1514, § 9; 2001, No. 1248, §§ 6, 7; 2009, No. 551, § 4; 2019, No. 315, § 714.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in the introductory language of (h)(2)(A).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Suspension of commercial driver's license for delinquent child support, § 27-23-125.

9-14-209. Office of Child Support Enforcement — Duty to provide information to consumer reporting agency — Definition.

(a)(1) As used in this section, “consumer reporting agency” means any person who, for monetary fees, dues, or on a cooperative, nonprofit basis regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(2) This term also includes any person who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(b) Upon written request by a consumer reporting agency, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide information to the agency regarding an amount of overdue support owed by a noncustodial parent in a case involving the Title IV-D agency.

(c) The office shall report to a consumer reporting agency the name of any noncustodial parent who owes overdue support in a case involving the Title IV-D agency and the delinquent amount.

(d)(1) Prior to disclosure of the information to a consumer reporting agency, the office shall send the noncustodial parent a notice by regular mail to his or her last known address.

(2) The notice shall inform the noncustodial parent of the name and address of the consumer reporting agency, the amount of overdue support to be released, the procedure available for the noncustodial parent to contest the accuracy of the information, and a statement that if the noncustodial parent fails to contest the disclosure within seven (7) days of the mailing date on the notice, the information will be released.

(e) The information shall not be made available to:

(1) A consumer reporting agency that the office determines does not have sufficient capability to systematically and timely make accurate use of such information; or

(2) An entity that has not furnished evidence satisfactory to the office that the entity is a consumer reporting agency.

History. Acts 1985, No. 989, § 29; A.S.A. 1947, § 34-1247; Acts 1989, No. 948, § 3; 1991, No. 301, §§ 1, 2; 1995, No. 1184, § 9; 1999, No. 1514, § 11.

A.C.R.C. Notes. The reference to the “Title IV-D agency” in (b) apparently means the Office of Child Support Enforcement.

Cross References. Alimony and child support — bond — method of payment, § 9-12-312.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Maintenance and attorney’s fees during pendency of action, § 9-12-309.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

CASE NOTES

Real Party in Interest.

In cases where child support rights are assigned by the custodial parent to the Office of Child Support Enforcement (OCSE), the state is the real party in interest for purposes of enforcement of the support rights and, therefore, OCSE attorneys represent the interests of the state, rather than the individual assignor

of the support rights; thus, there is no conflict of interest where OCSE first enforces one parent’s assigned child support rights against the other parent and then enforces the other parent’s assigned child support rights against the first parent. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

9-14-210. Office of Child Support Enforcement — Employment of attorneys — Real party in interest — Scope of representation.

(a) The Department of Human Services or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, or both, shall employ attorneys to assist in the establishment and enforcement of support orders in the State of Arkansas.

(b) An attorney employed by the Department of Human Services or the office, or both, or employed by a county, prosecuting attorney, or local child support enforcement unit pursuant to a cooperative agreement with the office shall undertake representation of the action instead of the prosecuting attorney in actions brought pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(c) An attorney employed under this subchapter, whether directly or by contract with the office, may be designated a special deputy prosecutor by the prosecuting attorney of that judicial district, for the limited purposes of prosecuting in a court of competent jurisdiction actions brought under § 5-26-401 or § 5-54-102, in those cases proceeding under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq. However, nothing in this section shall be construed to entitle such attorneys to those rights, benefits, or privileges that accrue to a prosecuting attorney under any other provision of state law, except as set forth below:

(1)(A) As a special deputy prosecutor, the attorney shall have the power to issue subpoenas in all matters being investigated by the office under § 5-26-401 or § 5-54-102 and may administer oaths for taking the testimony of witnesses subpoenaed before him or her.

(B) Such oaths shall have the same effect as if administered by the foreperson of a grand jury.

(C) The subpoena shall be substantially in the form set forth in § 16-43-212;

(2)(A) Appointment as a special deputy prosecutor shall not entitle the attorney to receive any additional fees or salary from the state for services provided pursuant to the appointment.

(B) Expenses of the special deputy prosecutor and any fees and costs incurred thereby in the prosecution of cases under § 5-26-401 or § 5-54-102 shall be the responsibility of the office under the Title IV-D program;

(3) A special deputy prosecutor appointed and functioning as authorized under this section shall be entitled to the same immunity granted by law to the prosecuting attorney; and

(4) The prosecuting attorney may revoke the appointment of a special deputy prosecutor at any time.

(d) The State of Arkansas is the real party in interest for purposes of establishing paternity and securing repayment of benefits paid and assigned past due support, future support, and costs in actions brought to establish, modify, or enforce an order of support in any of the following circumstances:

(1) Whenever public assistance under the transitional employment assistance program, i.e., Temporary Assistance for Needy Families Program, or § 20-77-109 or § 20-77-307 is provided to a dependent child or when child support services continue to be provided under 45 C.F.R. 302.33 as it existed on January 1, 2001;

(2) Whenever a contract and assignment for child support services have been entered into for the establishment or enforcement of a child support obligation for which an automatic assignment under § 9-14-109 is not in effect;

(3) Whenever duties are imposed on the state in Title IV-D cases pursuant to the Uniform Interstate Family Support Act, § 9-17-101 et seq.; or

(4) When a child is placed in the custody of the Department of Human Services and rights have been assigned under § 9-14-109.

(e)(1) In any action brought to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children, or to establish, enforce, or modify a child support obligation, the Department of Human Services or the office, or both, or their contractors, may employ attorneys.

(2) An attorney so employed shall represent the interests of the Department of Human Services or the office and does not represent the assignor of an interest set out in subsection (d) of this section.

(3) Representation by the employed attorney shall not be construed as creating an attorney-client relationship between the attorney and the assignor of an interest set forth in subsection (d) of this section, or with any party or witness to the action, other than the Department of Human Services or the office, regardless of the name in which the action is brought.

(f)(1) In any action brought by the Department of Human Services or the office, or both, or their contractors, to establish paternity, to secure repayment of government benefits paid or assigned child support arrearages, to secure current and future support of children, or to establish, enforce, or modify a child support obligation, if another party pleads a claim relating to child custody or visitation, property division, divorce, or other claims not directly related to support, the office shall advise the assignee, as set forth in subsection (d) of this section, of the need for separate legal counsel.

(2) However, for the benefit of the court clerk, in any action brought by the Department of Human Services or the office, or both, or their contractors, pursuant to subsection (d) of this section, the name of the physical custodian shall be set out in the body of any petition filed and order entered in the matter.

(g) It shall be unlawful for any person to use or disclose information concerning applicants for, or recipients of, child support enforcement services provided by the office under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., except for purposes in furtherance of child support activities, including the following:

(1) Administration of the state plan for child support enforcement required under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., or administration of the Title IV-D program;

(2) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program listed in subdivision (g)(1) of this section;

(3) Administration of any federal program that provides assistance, in cash or in kind, or services directly to individuals based on need;

(4) A report to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement service when circumstances indicate that the child's health or welfare is threatened; and

(5) When authorized in writing by the custodial or noncustodial parent, child support payment records for use by attorneys and abstractors to facilitate the release or satisfaction of child support liens on real property.

(h) The office may release information on the whereabouts of a party under the following conditions:

(1) The party requesting the information is the noncustodial parent or the physical custodian who submits the request by affidavit that clearly states the reason the information is requested, and that sets out the unsuccessful attempts to acquire the information from other sources;

(2) The party requesting the information shall submit the affidavit requesting the release of information to the office by first class mail; and

(3) Within seven (7) days of receiving the request, the office shall notify the party whose whereabouts are subject to disclosure that a request for location information has been made and that the requested information will be provided within twenty (20) days of the date of the notice unless the office receives a copy of a court order that enjoins the disclosure or otherwise restricts the requesting party's rights to contact or visit the party or the children, or the party requests an administrative hearing to contest the disclosure.

(i)(1) Whenever an administrative hearing is requested, the office shall not disclose the whereabouts of a party until the administrative hearing is held or completed.

(2) If any reasonable evidence of domestic violence or child abuse is presented at the administrative hearing or by affidavit and the disclosure of the last known address or any identifying information could be harmful to a party or the child, the office shall not release the information.

(j) It shall be unlawful to disclose to any committee or legislative body any information that identifies by name or address any applicant or recipient of Title IV-D child support enforcement services.

(k) A release of information on the whereabouts of a party made in compliance with § 9-14-205 is a permissible release of information in connection with the administration of the Title IV-D program.

(l) A release of payment information made in compliance with § 9-14-807 is a permissible release of information in connection with the administration of the Title IV-D program.

(m) A violation of subsection (g), subsection (h), subsection (i), subsection (j), subsection (k), or subsection (l) of this section shall constitute a Class B misdemeanor.

History. Acts 1985, No. 989, § 26; A.S.A. 1947, § 34-1244; Acts 1993, No. 468, § 2; 1993, No. 927, § 1; 1995, No. 1181, § 1; 1995, No. 1184, §§ 10, 27; 1997, No. 1296, § 22; 2001, No. 1248, §§ 8-10; 2003, No. 1020, §§ 2-4; 2003, No. 1176, § 1.

A.C.R.C. Notes. As originally amended by Acts 1993, No. 927, § 1, this section provided, in part: "The provisions of this section shall apply retrospectively to all cases pending before a court of competent

jurisdiction at the time of its enactment."

Cross References. Administrative sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Medicaid assistance for children — Effect on child support, § 20-77-109.

Nonsupport, § 5-26-401.

The Uniform Interstate Family Support Act, § 9-17-101 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Legislative Survey, Attorneys, 16 U. Ark. Little Rock L.J. 61.

U. Ark. Little Rock L. Rev. Survey of

Legislation, 2003 Arkansas General Assembly, Family Law, Child Support Payment Records, 26 U. Ark. Little Rock L. Rev. 414.

CASE NOTES

ANALYSIS

In General.
 Real Party in Interest.
 Service of Process.

In General.

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of the husband's obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

Real Party in Interest.

Subdivision (d)(2) of this section does not require that public funds be expended on behalf of the child before the Office of Child Support Enforcement is deemed a real party in interest. *State Office of Child Support Enforcement v. Harnage*, 322 Ark. 461, 910 S.W.2d 207 (1995).

For purposes of determining the real party in interest in a situation where the custodial parent has assigned his or her child support rights to the Office of Child Support Enforcement, it is immaterial whether the custodial parent is receiving public assistance on behalf of the child. *Office of Child Support Enforcement v.*

Terry, 336 Ark. 310, 985 S.W.2d 711 (1999).

In cases where child support rights are assigned by the custodial parent to the Office of Child Support Enforcement (OCSE), the state is the real party in interest for purposes of enforcement of the support rights and, therefore, OCSE attorneys represent the interests of the state, rather than the individual assignor of the support rights; thus, there is no conflict of interest where OCSE first enforces one parent's assigned child support rights against the other parent and then enforces the other parent's assigned child support rights against the first parent. *Office of Child Support Enforcement v. Terry*, 336 Ark. 310, 985 S.W.2d 711 (1999).

Service of Process.

Where mother assigned her child support rights to the Child Support Enforcement Unit, and the state filed a petition pursuant to this section, then, under subdivision (e)(2) of this section the attorney representing the state did not represent the mother, and under Ark. R. Civ. P. 5(b), service on the attorney was not service on the mother. *Vanzant v. Purvis*, 54 Ark. App. 384, 927 S.W.2d 339 (1996).

Cited: *Little's v. Office of Child Support Enforcement*, 2009 Ark. App. 686, 373 S.W.3d 335 (2009).

9-14-211. Assigned support rights generally.

(a) Support rights assigned to the Department of Human Services under § 9-14-109 shall constitute an obligation owed to the State of Arkansas by the person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(b) The amount of obligation owed to the state shall be the amount specified in a court order that covers the assigned rights or, when no court order exists, the amount of obligation owed to the state shall be the amount determined by a court based upon the noncustodial parent's income or ability to pay during the period of assignment as applied to the Arkansas child support guidelines and family support chart.

History. Acts 1985, No. 989, § 22; A.S.A. 1947, § 34-1240; Acts 1991, No. 369, § 1; 1997, No. 1296, § 23.

Cross References. Assignment of right to child support to Office of Child

Support Enforcement by recipient of Medicaid assistance, § 20-77-109.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-212. Assigned support rights — Non-Temporary Assistance for Needy Families Program application fee.

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration may charge a nonrefundable application fee of up to twenty-five dollars (\$25.00) to any person who contracts with the office for any services under Title IV-D of the Social Security Act for whom an assignment under § 9-14-109 is not in effect.

(b) The fee shall be known as a “non-Temporary Assistance for Needy Families Program application fee” and shall be a flat fee in an amount to be determined by the manager that shall be paid by the applicant at the time the application for assistance is submitted.

(c)(1) Non-Temporary Assistance for Needy Families Program services shall be provided to an applicant on a cost recovery/fee-for-services basis as provided under Title IV-D program requirements.

(2)(A) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall establish and publish a schedule of such fees that shall be administratively incorporated into child support enforcement policy.

(B) Copies of the fee schedule shall be provided to all applicants for child support services.

(d) Any fee or cost for services generated because of either a breach by the noncustodial parent of an agreement or of an order of the court shall be incorporated into the request for relief and reduced to a judgment in favor of and payable to the office.

History. Acts 1985, No. 989, § 23; A.S.A. 1947, § 34-1241; Acts 1993, No. 1242, § 4; 1995, No. 1184, § 11; 1997, No. 1296, § 24; 1999, No. 1514, § 10.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. Administrative sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-213. Assigned support rights — Notice — Termination of assignment.

(a)(1) When a court has ordered support payments to a person who has made an assignment of support rights under § 9-14-109 or who has executed a contract with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration for non-Temporary Assistance for Needy Families Program assistance, the office shall notify the clerk of the court.

(2) Upon such notice, the clerk shall indicate in the registry of the court that the support is being collected under Title IV-D of the Social Security Act, and the clerk shall redirect all payments received to the office at the Arkansas Child Support Clearinghouse.

(3) Notification to the clerk by the office shall be sufficient to authorize the clerk to redirect payments to the Arkansas Child Support Clearinghouse. The court need not hold a hearing on the matter, and child support shall be paid through the Arkansas Child Support Clearinghouse pursuant to § 9-14-801 et seq.

(b) Lump-sum payments toward arrearages received by the clerk subsequent to termination of the assignment that were collected by the office through debt setoff or legal process shall be redirected to the Arkansas Child Support Clearinghouse.

History. Acts 1985, No. 989, § 24; A.S.A. 1947, § 34-1242; Acts 1997, No. 1296, § 25.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Grants of assistance, § 20-76-401 et seq.

9-14-214. Assigned support rights — Award of fee in action — Definition.

(a) In any action brought on behalf of a person to whom a support obligation is owed under an assignment pursuant to § 9-14-109 or pursuant to a contract for services under Title IV-D of the Social Security Act, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall be awarded a fee in an amount equal to not less than three percent (3%) and not more than six percent (6%) of the overdue support.

(b) For purposes of this section, “overdue support” means a delinquency pursuant to an obligation created under a court order or an order of an administrative process established under state law for the support and maintenance of a minor child.

History. Acts 1985, No. 989, § 27; A.S.A. 1947, § 34-1245; Acts 1993, No. 1242, § 13; 1997, No. 1296, § 26.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. Administrative sanctions — Transitional employment assistance, § 20-76-410.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

9-14-215. Fees in actions under Uniform Interstate Family Support Act.

(a)(1) There shall be no filing fee, service fee, or other costs collected from the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration or any attorney

acting on its behalf for actions brought under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

(2) The court may direct such fees and costs to be paid by the noncustodial parent to the clerk of the court and the sheriff upon adjudication of the case.

(b)(1) The clerk and the sheriff may collect fees in all other cases from the office by submitting monthly or quarterly statements for their services.

(2) Each statement shall clearly note the full name of the noncustodial parent thereon.

(3) No clerk or sheriff may refuse service to the office or its attorney for its failure to pay the fees in advance.

(c)(1) A circuit clerk may collect from the noncustodial parent a fee of ten dollars (\$10.00) for completion of income withholding forms for a custodial parent pursuant to this subchapter.

(2) A notice of this fee shall be sent to the noncustodial parent along with the notice pursuant to § 9-14-221.

(3) After thirty (30) days, upon nonpayment of the fee by the noncustodial parent, the clerk may notify the payor who shall withhold the fee and remit the fee to the clerk.

History. Acts 1985, No. 989, § 28; A.S.A. 1947, § 34-1246; Acts 1991, No. 883, § 1; 1993, No. 468, § 3; 1995, No. 1184, § 12.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-216. Income withholding — Establishment and maintenance of system.

(a)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall establish and maintain a system to promptly implement income withholding for support orders issued in other states.

(2) The office shall also seek assistance from other states in implementing income withholding in other states for support orders issued in this state.

(b) The other state shall forward to the office three (3) certified copies of the support order issued by its court or administrative forum and a notice that contains the noncustodial parent's name, Social Security number, and current address, the name and address of the payor to the noncustodial parent, the amount to be withheld, and the name and address where payments are to be mailed by the office.

(c) Upon receipt of the notice and certified copies of the order, the office shall establish the case within its system and follow the procedures enumerated in §§ 9-14-221 — 9-14-223 and 9-14-229.

(d) Payors notified of income withholding orders arising from other states shall be bound by and under the same requirements as though the order were issued by a court of this state under this subchapter.

(e) The office shall forward all payments received under this subchapter to the address provided by the other state.

(f) The office shall notify the state where the support order was entered when the noncustodial parent terminates employment within this state and shall provide the new address and new employer to the state, if known.

History. Acts 1985, No. 989, § 30; A.S.A. 1947, § 34-1248; Acts 1989, No. 948, § 4.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-217. Income withholding — Supersession of § 9-14-102.

The income withholding provisions of this subchapter shall supersede the provisions of § 9-14-102 when applicable.

History. Acts 1985, No. 989, § 31; A.S.A. 1947, § 34-1249.

enforcement guidelines, see the Appendix at the end of this subtitle.

Cross References. For child support

9-14-218. Income withholding — Time of taking effect generally — Forms.

(a)(1) In all decrees or orders that provide for the payment of money for the support and care of any children, the court shall include a provision directing a payor to deduct from:

(A) Money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to meet the periodic child support payments imposed by the court plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order; and

(B) Any lump-sum payment as defined in § 9-14-201, the full amount of past due support owed by the noncustodial parent not to exceed fifty percent (50%) of the net lump-sum payment.

(2) The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies.

(b) Income withholding shall apply to current and subsequent periods of employment, if used in employment, or remuneration, once activated.

(c)(1) Any forms necessary to provide notice, affidavits, or any other matter that is required by this subchapter to enforce the payment of child support shall be devised by the State Commission on Child Support [abolished] with advice from the Administrative Office of the Courts.

(2) Upon the approval of the forms by the Chief Justice of the Supreme Court, the forms shall be used on a statewide basis in all cases requiring an order or notice of income withholding for child support.

(3) Any necessary changes in the forms shall be the responsibility of the Supreme Court.

(4) Distribution of the forms shall be the responsibility of the Administrative Office of the Courts.

(d) All judgments for past due support shall include, in the same paragraph denoting the judgment amount, a statement that the amount is subject to reduction through income withholding to put third parties on notice that the amount currently owed may differ from that reflected in the judgment.

(e) In cases brought pursuant to Title IV-D of the Social Security Act, with support orders effective prior to October 1, 1989, income withholding shall take effect immediately in any child support case at the request or upon the consent of the noncustodial parent or on the date the court grants an approved request of the custodial parent brought in accordance with procedures and standards as established by the Title IV-D agency.

(f) In those cases in which a support order has been issued or modified after August 2, 1985, without the inclusion of an income withholding provision, income withholding may be initiated in accord with procedures set forth in § 9-14-221 whenever child support arrearages owed by the noncustodial parent equal the total amount of court-ordered support payable for thirty (30) days.

History. Acts 1985, No. 989, § 7; A.S.A. 1947, § 34-1225; Acts 1987, No. 719, § 2; 1989, No. 948, § 5; 1991, No. 1095, §§ 3, 4; 1993, No. 396, § 1; 1994 (1st Ex. Sess.), No. 5, § 1; 1995, No. 1184, § 26; 1997, No. 1296, § 27; 1999, No. 1514, § 12; 2003, No. 1020, § 5; 2007, No. 713, § 3.

A.C.R.C. Notes. The reference to the "Title IV-D agency" in (e) apparently

means the Office of Child Support Enforcement.

U.S. Code. Title IV-D, referred to in this section, refers to Title IV-D of the Social Security Act, which is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

Laurence, Recent Developments in the Arkansas Law of Garnishment: A Compendium of the Pertinent Cases and Statutes, 1992 Ark. L. Notes 39.

Laurence, Recent Developments in the Arkansas Law of Garnishment: Does a Corporate Garnishee Need a Lawyer to Answer the Writ?, 1997 Ark. L. Notes 95.

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

CASE NOTES

Other Remedies Permitted.

The fact that a support order provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collection. *Stewart v. Normont*, 328 Ark. 133, 941 S.W.2d 419 (1997).

Tennessee chancery court order contained no language to suggest that, by

accepting \$25,000 of husband's Wal-Mart settlement proceeds, wife released the balance of the child support arrearage judgment or waived her right to collect; while she could have agreed to receive only \$25,000 from the settlement in full satisfaction of her judgment, there was no language in the order that she did so, and nothing in the order precluded her from exercising whatever legal remedies were

available to judgment creditors in general Burkeen, 96 Ark. App. 13, 237 S.W.3d 521
for the collection of judgments. Sears v. (2006).

9-14-219. Income withholding — Priority of order.

Orders of income withholding for support shall have priority over all other legal processes under state law against the money, income, or periodic earnings of the noncustodial parent.

History. Acts 1985, No. 989, § 11; enforcement guidelines, see the Appendix
A.S.A. 1947, § 34-1229. at the end of this subtitle.

Cross References. For child support

9-14-220. Income withholding — Persons subject to order — Ground to contest order.

(a) All persons under court order to pay support on August 1, 1985, who become delinquent in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to the income withholding provisions of this subchapter. An order of income withholding shall become effective when the requirements set forth in § 9-14-221 have been satisfied.

(b) The only ground to contest an order of income withholding effective under § 9-14-221 shall be mistake of fact.

History. Acts 1985, No. 989, § 14; enforcement guidelines, see the Appendix
A.S.A. 1947, § 34-1232. at the end of this subtitle.

Cross References. For child support

9-14-221. Income withholding — When orders take effect — Notice — Costs.

(a) Orders of income withholding that were not effective immediately by order of the court, upon the consent of the noncustodial parent, or at the request of the custodial parent, shall become effective when payment arrearages owed by the noncustodial parent equal the total court-ordered support payable for thirty (30) days.

(b)(1) Prior to notification to the payor, for orders to be effective under this section, the noncustodial parent shall be sent a notice by any form of mail addressed to the parent at his or her last known address as contained in the records of the court clerk.

(2) Actual costs of mailing the notice may be collected by the clerk from the custodial parent.

(3) The notice shall contain the following information:

(A) The amount to be withheld;

(B) The amount of arrearages alleged to have accrued under the support order and that an additional amount of not less than twenty percent (20%) of the support ordered will be withheld to liquidate the arrearages or such amount as set forth by an order if applicable;

(C) That the income withholding applies to current and subsequent periods of employment, if used in employment, or remuneration;

(D) The procedure available to contest the withholding on the ground that the withholding is not proper because of mistake of fact;

(E) That failure to contest the withholding within ten (10) days of the receipt or refusal of the notice will result in the payor's being notified to begin the withholding;

(F) That if the noncustodial parent contests the withholding, he or she will be afforded an opportunity to present his or her case to the court or its representative in that jurisdiction within thirty (30) days of receipt of the notice of contest; and

(G) That state law prohibits employers from retaliating against a noncustodial parent under an income withholding order and that the court or its representative should be contacted if the noncustodial parent has been retaliated against by his or her employer as a result of the income withholding order.

(c)(1) Should the noncustodial parent contest the withholding because of mistake of fact, then after providing the noncustodial parent an opportunity to present his or her case the court or its representative shall determine whether the withholding shall occur and shall notify the noncustodial parent of the determination and, if appropriate, the time period in which withholding will commence.

(2) The notice shall include the information to be provided to the payor as required in § 9-14-222.

History. Acts 1985, No. 989, § 15; A.S.A. 1947, § 34-1233; Acts 1987, (1st Ex. Sess.), No. 33, § 1; 1991, No. 1095, § 5; 1993, No. 396, § 2; 2003, No. 1020, § 6.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

9-14-222. Income withholding — Notice to payor — Costs.

(a) A payor shall be notified of an order of income withholding by a notice as set forth in this section.

(b)(1) The order and notice of income withholding may be served on the payor by first class mail.

(2) If the payor does not remit the wage withholding in accordance with subdivision (d)(11) of this section, a second notice shall be sent pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

(c) Costs for service of this notice may be collected from the custodial parent.

(d) The notice shall include the following information:

(1) The noncustodial parent's name and Social Security number;

(2) The amount to be withheld and that the total amount actually withheld cannot be in excess of the maximum amount allowed under

section 303(b) of the Consumer Credit Protection Act if the payor is the employer of the noncustodial parent;

(3) To whom and in what manner the withholding is to be paid and that the payments are to occur at the same time the noncustodial parent is paid;

(4) That the payor may deduct a fee not to exceed two dollars and fifty cents (\$2.50) in addition to the court-ordered amount for the administrative cost incurred in each withholding;

(5) That withholding is binding on the payor until further notice by the court or its representative;

(6) That the payor, if an employer, is subject to a fine of up to fifty dollars (\$50.00) a day for discharging a noncustodial parent from employment or for refusing to employ, or for taking disciplinary action against, any noncustodial parent because of the withholding;

(7) That the payor is liable for any amount up to the accumulated amount that should have been withheld should he or she fail to withhold income in accordance with the notice;

(8) That the withholding is for child support and, under § 9-14-219, takes priority over any other legal process against the same income;

(9) That the payor may combine and remit from several noncustodial parents one (1) withholding payment so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify the portion of the payment that is attributable to each of the noncustodial parents;

(10) That if the payor is already under an income withholding order under this subchapter, then the payor must make disbursements under each income withholding notice or order under the procedures for the payor provided under § 9-14-228;

(11) That the payor must implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed;

(12) That the payor must notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known; and

(13) The procedure available in that jurisdiction to the payor to object to the withholding on the ground of mistake of fact and that the objection must be made in writing and to whom it must be sent within seven (7) days following the date the notice was received or refused or the sanctions set forth in subdivisions (d)(6) and (7) of this section shall apply.

History. Acts 1985, No. 989, § 16; A.S.A. 1947, § 34-1234; Acts 1994 (1st Ex. Sess.), No. 5, § 3; 1999, No. 1514, § 13.

U.S. Code. Section 303(b) of the Consumer Credit Protection Act, referred to in

this section, is codified as 15 U.S.C. § 1673(b).

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

CASE NOTES

Jurisdiction. The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court.

Partlow v. Darling Store Fixtures, 314 Ark. 87, 858 S.W.2d 695 (1993).
Cited: Monroe Auto Equip. Co. v. Partlow, 311 Ark. 633, 846 S.W.2d 637 (1993).

9-14-223. Income withholding — Objection of payor.

Upon receipt of an objection from a payor under an order of income withholding, the court or its representative shall expeditiously determine whether the payor shall be relieved under the order and shall so inform the payor within ten (10) days of receipt of the objection by a notice of its determination sent to the payor by regular mail.

History. Acts 1985, No. 989, § 17; A.S.A. 1947, § 34-1235.

enforcement guidelines, see the Appendix at the end of this subtitle.

Cross References. For child support

RESEARCH REFERENCES

ALR. Laches or Acquiescence as Defense, So as to Bar Recovery of Arrearages

of Permanent Alimony or Child Support. 22 A.L.R.7th Art. 1 (2017).

CASE NOTES

Cited: Branch v. Carter, 326 Ark. 748, 933 S.W.2d 806 (1996).

9-14-224. Income withholding — Duties of payor.

- (a) A payor who has been notified of an order of income withholding shall be bound by the order until further notice by the court or its representative.
- (b)(1) A payor who is an employer that withholds support payments from more than one (1) employee shall have the option to periodically remit to the clerk funds withheld from all such employees in a single check rather than remitting the funds withheld from each employee separately.
- (2) If the payor elects to remit all such funds in a single check, each such remittance shall be accompanied by a list showing the portion of the funds withheld from each employee.
- (c) A payor shall notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent’s last known address and the name and address of any new employer, if known.

History. Acts 1985, No. 989, § 8; A.S.A. 1947, § 34-1226; Acts 1993, No. 1152, § 2. enforcement guidelines, see the Appendix at the end of this subtitle.

Cross References. For child support

9-14-225. Income withholding — Liability of payor — Distribution of moneys.

(a) A payor who has been notified of an order of income withholding shall be liable for any amount up to the accumulated amount that should have been withheld should he or she fail or refuse to withhold the income in accordance with the notice.

(b) Once money has been withheld, except as provided in subsection (c) of this section, it shall be considered the property of the custodial parent. The custodial parent to whom the money is owed may seek any and all available redress against any employer who fails to transmit money pursuant to an order of income withholding.

(c) Moneys withheld in cases brought under Title IV-D of the Social Security Act shall become the property of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to be distributed in accordance with child support policy.

History. Acts 1985, No. 989, § 9; A.S.A. 1947, § 34-1227; Acts 1989, No. 210, § 1; 1995, No. 1184, § 13.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

RESEARCH REFERENCES

ALR. Laches or Acquiescence as Defense, So as to Bar Recovery of Arrearages

of Permanent Alimony or Child Support. 22 A.L.R.7th Art. 1 (2018).

9-14-226. Income withholding — Prohibition of disciplinary action against employee — Penalty.

(a) A payor who is an employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a noncustodial parent under an income withholding order.

(b) Any employer violating this subchapter shall be subject to the contempt powers of the court issuing the order and may be fined up to fifty dollars (\$50.00) per day.

(c) The noncustodial parent shall have the burden to prove that income withholding was the sole reason for the employer's action.

History. Acts 1985, No. 989, § 10; A.S.A. 1947, § 34-1228.

enforcement guidelines, see the Appendix at the end of this subtitle.

Cross References. For child support

9-14-227. Income withholding — Administrative costs — Applicability to unemployment compensation and workers' compensation.

(a) A payor may withhold up to two dollars and fifty cents (\$2.50) per pay period in addition to the court-ordered income withholding amount for the administrative cost incurred in each withholding.

(b) The income withholding provisions of this subchapter shall apply to unemployment compensation benefits to the extent allowed by §§ 11-10-109 and 11-10-110.

(c) The income withholding provisions of this subchapter shall apply to workers' compensation benefits to the extent allowed by § 11-9-110.

History. Acts 1985, No. 989, § 12; A.S.A. 1947, § 34-1230; Acts 1987, No. 524, § 1; 1995, No. 1184, § 25.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

9-14-228. Income withholding — Procedures for payor.

(a)(1) A payor shall withhold the amount indicated in the notice from money, income, or periodic earnings due the noncustodial parent and remit the amount in the manner set forth in the notice.

(2) Payments are to be made at the same time the noncustodial parent is paid. The payor shall identify the date of income withholding on each payment.

(3) The amount withheld, when added to the administrative fee charged by the payor, shall not exceed the maximum limit under section 303(b) of the Consumer Credit Protection Act if the payor is an employer of the noncustodial parent.

(b) A payor may combine and remit one (1) single withholding payment from several noncustodial parents so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify that portion of the payment that is attributable to each of the noncustodial parents and the date of income withholding for each payment.

(c)(1) If there is more than one (1) notice or order for income withholding for current child support against a noncustodial parent and the total amount requested exceeds the limits imposed under the Consumer Credit Protection Act, the payor shall make pro rata disbursements, "pro rata" being the proportionate amount each notice or order bears to the total amount due for current support under all notices and orders.

(2) If the total to be withheld for current and past due support exceeds the Consumer Credit Protection Act's limits and if all notices and orders for current support have been satisfied, the payor shall

make pro rata disbursements of the remaining amount available for disbursement for each notice or order involving past due support, "pro rata" being the proportionate amount each notice or order for past due support bears to the total amount due for past due support under all notices and orders.

(3)(A) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall notify employers of this change from first come, first served to pro rata in the treatment of multiple income withholding notices and orders for child support.

(B) Further, the office shall take steps through public information activities to inform the public of this change.

(C) As far as practicable, the office shall consolidate multiple income withholding notices and orders involving the same payor and noncustodial parent through issuance of a single notice to the payor under the notification procedures set out under § 9-14-222, delineating the amounts of pro rata disbursements to be made by the payor in Title IV-D cases.

(d) The payor shall implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed.

History. Acts 1985, No. 989, § 13; A.S.A. 1947, § 34-1231; Acts 1989, No. 948, § 6; 1994 (1st Ex. Sess.), No. 5, § 2.

U.S. Code. Section 303(b) of the Consumer Credit Protection Act, referred to in this section, is codified as 15 U.S.C. § 1673(b).

The reference to Title IV-D in subdivision (c)(3)(C) is a reference to Title IV-D of the Social Security Act, codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

CASE NOTES

ANALYSIS

Jurisdiction.

Prohibition.

Jurisdiction.

The circuit court was without jurisdiction to review a collateral administrative order defining the manner of paying child support issued by the chancery court. *Partlow v. Darling Store Fixtures*, 314 Ark. 87, 858 S.W.2d 695 (1993).

Prohibition.

Writ of prohibition was denied where petitioners did not show that the issuance of an administrative order, whatever might be said of its propriety or validity, affecting the collection of child support, was an usurpation of jurisdiction by the respondents, or that the issues common to the proceedings were more appropriate to prohibition than to appeal. *Monroe Auto Equip. Co. v. Partlow*, 311 Ark. 633, 846 S.W.2d 637 (1993).

9-14-229. Income withholding — Termination of order — Notice to payor.

(a) The circuit court may terminate an income withholding order upon proof that the court or its representative has been unable to deliver payments to the custodial parent for a period of six (6) months.

(b) An income withholding order shall terminate when there is no further support obligation owed.

(c) The circuit court or its representative shall notify the payor to cease withholding and shall refund support payments to the noncustodial parent in those cases in which no state debt as defined in § 9-14-211 remains unpaid.

History. Acts 1985, No. 989, § 18; enforcement guidelines, see the Appendix A.S.A. 1947, § 34-1236. at the end of this subtitle.

Cross References. For child support

9-14-230. Decree as lien on real property.

(a)(1)(A) Any decree, judgment, or order that contains a provision for payment of money for the support and care of any child or children through the registry of the court or through the Arkansas Child Support Clearinghouse shall become a lien upon all real property, not otherwise exempt by the Arkansas Constitution, owned by the noncustodial parent or that the noncustodial parent may afterwards, or before the lien expires, acquire.

(B) Such lien originating in another state shall be accorded full faith and credit as if such lien originated in the State of Arkansas.

(2) The decree, judgment, or order shall become a lien as each support installment becomes due and remains unpaid.

(3) The decree, judgment, or order shall not become a lien for any sum or sums prior to the date they severally become due or payable.

(b)(1) The decree, judgment, or order shall be recorded in the judgment records of the county of the circuit court issuing the order in the same manner as other judgments as provided by law.

(2) Upon receipt of a certified copy of the decree, order, or judgment, the circuit clerk of any other county within the State of Arkansas shall record the certified copy, which shall become a lien against real estate located in that county owned or thereafter acquired by the noncustodial parent.

(3) When recording the decree, judgment, or order in a county other than the county of the circuit court issuing the order, a certified copy of the support payment record from the registry of the court noting all payments made since August 1, 1985, or from the date of the entry of the support order to the present, shall accompany the decree, judgment, or order.

(4) If a certified copy of the payment record does not accompany the decree, order, or judgment, the lien shall be for only the amount of payments that become due and remain unpaid subsequent to the date of recording in the county other than the county of the circuit court issuing the order.

(c)(1) The lien against real property created in this section shall be prioritized by the date it is created as set forth in subsection (b) of this section as would any other encumbrance under state law.

(2) It is the intent of the General Assembly that the lien created under this section does not relate back in time to the filing date of the

decree, judgment, or order from which it arose but shall become viable only at such time as a support payment becomes due and remains unpaid.

(3) A lien created under this section may be satisfied through foreclosure and execution under the same procedure as otherwise provided by state law.

(d)(1)(A) A certificate of the noncustodial parent sworn under penalty of perjury that all amounts and installments owed have been fully paid prior to the date of the certificate, when acknowledged before a notary public and accompanied by a certified copy of the support record since August 1, 1985, or the date of entry of the order, whichever is most recent in time, shall be prima facie proof of full payment of support owed and conclusive in favor of any person dealing in good faith and for a valuable consideration with the noncustodial parent.

(B) In the event of a legal disability of a noncustodial parent, the certificate of the personal representative of the noncustodial parent shall have the same effect.

(C) The certificate shall be sufficient to clear the lien against real property created under this section.

(2)(A) A noncustodial parent who makes a false material statement, knowing it to be false, in executing the certificate as provided in this section shall be subject to the criminal penalty for perjury.

(B) The certificate as provided in this section shall be considered a statement under oath in an official proceeding for purposes of criminal prosecutions.

(3) The criminal prosecution provided for in this subsection shall not be exclusive and shall not supersede the rights that the custodial parent may have to pursue civil remedies against the noncustodial parent.

(e)(1) The lien created under this section may be cancelled or discharged upon full satisfaction.

(2) The lien is satisfied in full when the decree or order so finds or directs or, in the absence of such a decree or order, when all children covered under the order reach majority or are otherwise emancipated or die and all arrearages accruing under the decree, order, or judgment are paid in full according to the payment records of the court or by sworn affidavit of the person to whom support was paid.

(f) Notwithstanding other statutes in conflict with this section, the liens authorized by this subchapter shall continue in full force for three (3) years from the date when all children covered under the order reach majority or are emancipated or die without necessity or limitation of revivor under § 16-65-117 or § 16-65-501.

History. Acts 1985, No. 989, § 2; 1986 (2nd Ex. Sess.), No. 13, § 1; A.S.A. 1947, § 34-1220; Acts 1997, No. 1296, § 28.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

CASE NOTES

Bankruptcy.

The ex-wife of a bankrupt has a lien on the bankruptcy estate for the amount of unpaid child support payments due on the date that the bankruptcy petition was filed. In re Benefield, 102 B.R. 157 (Bankr. E.D. Ark. 1989).

Child support payments accruing after the filing of a petition in bankruptcy are not allowable claims in a chapter 7 case. In re Benefield, 102 B.R. 157 (Bankr. E.D. Ark. 1989).

Cited: Trafford v. Lilley, 2010 Ark. App. 158 (2010).

9-14-231. Overdue support as lien on personal property.

(a)(1)(A) Support that has been ordered paid through the registry of the court or through the Arkansas Child Support Clearinghouse and that has become overdue shall become a lien on all personal property owned by the noncustodial parent wherever it may be found and need not be limited to the confines of the county where the circuit court is sitting.

(B) A lien originating in another state shall be accorded full faith and credit as if the lien originated in the State of Arkansas.

(2) Upon proof that the noncustodial parent has refused or failed to support his or her child or children pursuant to the order, the court may cause the property to be immediately surrendered to the sheriff of the county where the property is located and may direct the sheriff to take action as necessary to have it sold and apply the proceeds from any sale thereof toward the costs of the sale, any superior liens, the support obligation, including court costs and any attorney's fees awarded pursuant thereto, and any inferior liens.

(3) Any amounts in excess of the overdue support, costs, fees, and other liens shall be paid to the noncustodial parent.

(4) Any person who may purchase any personal property owned by the noncustodial parent for value and without notice of the lien for support shall take the property free of the lien.

(b) The lien against personal property created in this section shall bear the same priority as set forth in § 4-9-322.

History. Acts 1985, No. 989, § 3; A.S.A. 1947, § 34-1221; Acts 1987, No. 533, § 1; 1997, No. 1296, § 29; 1999, No. 1514, § 14; 2003, No. 1473, § 16.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, Baby Needs New Shoes: Child Support Collection and Bankruptcy, 1990 Ark. L. Notes 51.

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 8 U. Ark. Little Rock L.J. 577.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 577.

9-14-232. Healthcare coverage.

(a) In all cases in which the support and care of any children are involved, the court may:

(1) Order either parent to secure and maintain healthcare coverage for the benefit of the children when healthcare coverage is available or becomes available to the parent at a reasonable cost; and

(2) Allocate the cost of coverage between the parents.

(b)(1) When the noncustodial parent has secured such coverage, the signature of the custodial parent, indicated as such, shall be a valid authorization to the coverage provider or insurer for the purposes of processing a payment to the children's health services provider.

(2) An order for healthcare coverage shall operate as an assignment of all benefit rights to require the insurer or coverage provider of the healthcare coverage to pay benefits for services rendered to the children to the custodial parent or to the children's health services provider.

History. Acts 1985, No. 989, § 4; A.S.A. 1947, § 34-1222; Acts 1993, No. 965, § 1; 2019, No. 904, § 6.

Amendments. The 2019 amendment added the (a)(1) designation; and added (a)(2).

Cross References. Assignment of

right to child support to Office of Child Support Enforcement by recipient of Medicaid assistance, § 20-77-109.

For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-233. Arrearages — Interest and attorney's fees — Work activities and incarceration.

(a) All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum unless the owner of the judgment or the owner's counsel of record requests prior to the accrual of the interest that the judgment shall not accrue interest.

(b) The circuit court shall award a minimum of ten percent (10%) of the support amount due or any reasonable fee, including a contingency fee approved by the circuit court, as attorney's fees in actions for the enforcement of payment of support provided for in the order.

(c) Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

(d)(1) In all cases brought pursuant to Title IV-D of the Social Security Act wherein the custodial parent or children receive temporary assistance for needy families or benefits under the food stamp program, the Supplemental Security Income program, Medicaid, and the Children's Health Insurance Program and the obligated parent owes overdue child support, the court shall order the obligated parent to pay the overdue amount according to a plan approved by the court and in compliance with this Code.

(2)(A) If the obligated parent subject to such a plan is not incapacitated, the circuit court may order the obligated parent to participate in work activities including, but not limited to, unsubsidized employment, subsidized private sector employment, subsidized public sector employment, work experience including work associated with the refurbishing of publicly assisted housing in the event that sufficient private sector employment is not available.

(B) The number of hours that the obligated parent must participate in work activities per week shall be set by the court in an appropriate order.

(C) Additionally, the circuit court may order the obligated parent to spend a minimum number of hours engaged in applying for available positions that the obligor is qualified to fill and keep records of such activities as directed by the court.

(3) If the obligated parent can demonstrate enrollment and full participation in job-related training, which may include on-the-job-training, job search and job readiness assistance, community service programs, vocational education training not to exceed twelve (12) months' duration, job skills training directly related to employment, education directly related to employment if the obligated parent has not received a high school diploma or high school equivalency diploma approved by the Adult Education Section, the circuit court may substitute such participation in lieu of work activities as set out in subsection (e) of this section.

(e) If the obligated parent who is not incapacitated refuses to pay past due support or refuses to engage in work activities or seek work activities as ordered by the court, the court may order the obligated parent to be incarcerated.

(f) In any action brought for the enforcement of a child support obligation, whenever the court orders an obligated parent to be incarcerated for failure to obey a previous order, the court may further direct that the obligated parent be temporarily released from confinement to engage in work activity upon such terms and conditions as the court deems just.

History. Acts 1989, No. 383, § 2; 1995, No. 707, § 1; 1997, No. 1296, § 30; 1999, No. 1514, §§ 15, 16; 2001, No. 1248, §§ 11-13; 2015, No. 1115, § 21.

Amendments. The 2015 amendment substituted "high school equivalency diploma approved by the Department of Career Education" for "general education development certificate" in (d)(3).

Meaning of "this Code". See § 1-2-113(b).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General As-

sembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

CASE NOTES

ANALYSIS

Attorney's Fee.
Judgment Interest.

Attorney's Fee.

Award of attorney's fees to an adult son seeking unpaid child support was proper because subsection (b) of this section did not require the trial court to award a contingency fee. *Mills v. Mills*, 2009 Ark. App. 175, 315 S.W.3d 707 (2009).

Judgment Interest.

Upon awarding unpaid child support to a 22-year-old son, who intervened in a domestic relations case between his parents to collect the unpaid support on his own behalf, the trial court erred under subsection (a) of this section in awarding interest from the date the petition to col-

lect child support was filed because it should have been awarded from the date the child support should have been paid. *Mills v. Mills*, 2009 Ark. App. 175, 315 S.W.3d 707 (2009).

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under this section and to attorney's fees was barred by *res judicata*, and *res judicata* also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under §§ 9-12-314 and 9-14-234. *Williams v. Nesbitt*, 2012 Ark. App. 408, 421 S.W.3d 320 (2012).

Cited: *Gould v. Gould*, 308 Ark. 213, 823 S.W.2d 890 (1992); *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996).

9-14-234. Arrearages — Redirection of child support — Finality of judgment — Definition.

(a) As used in this section, "physical custodian" means a natural or adoptive parent, a guardian, or a person or agency who has or is anticipated to have custody of a child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay support for the child or children.

(b) Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or the Arkansas Child Support Clearinghouse shall be final judgment subject to writ of garnishment or execution as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order.

(c)(1) The court may not set aside, alter, or modify any decree, judgment, or order that has accrued unpaid support prior to the filing of the motion.

(2) However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent.

(d)(1) In cases brought pursuant to Title IV-D of the Social Security Act, a change in the physical custodian of a child or children, other than a party to the child support order, shall require written notice to the clerk of the court to redirect the child support to the present physical custodian when that physical custodian has or is anticipated to have custody of the child or children for more than eight (8) consecutive

weeks, other than court-ordered visitation, during which there is an obligation to pay child support.

(2) Any custodial parent who leaves a child in the physical custody of a third party for more than eight (8) consecutive weeks shall be presumed to have notice of the redirection of child support payments.

(e)(1) Notice to the clerk of the court shall:

(A) Be in writing; and

(B) Contain the following:

(i) The style of the case and the court docket number;

(ii) The names and addresses of each parent, guardian, or other caretaker;

(iii) The name of each child for whom child support is owed;

(iv) The name and address of the physical custodian along with a statement from the custodial parent or physical custodian that states that the child has resided or is anticipated to reside with the physical custodian for more than eight (8) consecutive weeks other than court-ordered visitation;

(v) A statement that a parent, guardian, or other caretaker is required to file written objections within ten (10) days of the date on which he or she receives notice; and

(vi) An affidavit attesting that a copy of the notice required under subdivision (d)(1) of this section has been provided by personal service or by certified mail, restricted delivery, return receipt requested to each parent, guardian, or other caretaker, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(2) Notification is sufficient under this section if the notice is mailed to each parent, guardian, or other caretaker at:

(A) The last known address provided to the court by the parent, guardian, or other caretaker; or

(B) An address that is verified by the physical custodian or custodial parent.

(f) If no objection to the redirection of child support is filed with the clerk of the court within ten (10) days, the clerk or the Office of Child Support Enforcement clearinghouse shall redirect current child support payments to the physical custodian and so note the redirection on the payment records of the case.

(g) If an objection to redirection of child support is filed with the clerk of the court, the custodial parent, physical custodian, or the Office of Child Support Enforcement may petition the court for an order to redirect child support payments to the physical custodian.

(h) All current child support payments shall:

(1) Follow the child or children; and

(2) Be payable to:

(A) The physical custodian; or

(B) A judicially appointed conservator or guardian who has a legal and fiduciary duty to the custodial parent or child.

(i)(1) The amount of accrued arrearages or overdue support to which a physical custodian is entitled shall be prorated and payable to the

physical custodian for the period of actual custody of any child or children for whom support is owed.

(2) If there has been more than one (1) physical custodian, each shall be entitled to receive accrued arrearages or overdue support for the period of their custody of any child or children for whom support is owed, unless the court, for good cause shown and in the best interests of the child or children, shall find otherwise.

(j) Nothing in this section shall be construed to limit the jurisdiction of the court to proceed to enforce a decree, judgment, or order for the support of a minor child or children through contempt proceedings when the arrearage is reduced to judgment under subsection (b) of this section.

History. Acts 1989, No. 383, § 2; 1995, No. 1180, § 1; 1995, No. 1184, § 24; 1997, No. 1296, § 31; 2019, No. 904, §§ 7, 8.

Amendments. The 2019 amendment inserted “or is anticipated to have” in (a) and (d)(1); rewrote (e); inserted “or the Office of Child Support Enforcement clearinghouse” in (f); in (g), inserted “custodial parent” and substituted “Office of Child Support Enforcement of the Rev-

enue Division of the Department of Finance and Administration” for “office”; rewrote (h); and made stylistic changes.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

ALR. Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for contributions to housing costs, utility bills, and other alleged household necessities made for child's benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

Ark. L. Rev. Case Note, Roark v. Roark: An Expansion of the Application of Estoppel to Prohibit the Collection of Child Support Arrearages, 45 Ark. L. Rev. 631.

CASE NOTES

ANALYSIS

Construction.
Calculation.
Defenses.
Equitable Estoppel.
Exception.
Intent.
Method of Collection.
Modification.
Private Support Agreements.
Retroactive Effect.
Statute of Limitations.

Construction.

Where parties' eldest son turned 18 on July 5, 1992, husband's child support obligation continued under this section; however, under § 9-14-237, husband's child support obligation for that son terminated by operation of law on August 13, 1993, the effective date of the section, and the chancellor erred in awarding child support arrearage for eldest son beyond that date. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

Where no motion for modification of

child support payments had been filed by the father, the existing support order still stood for the mother; this section requires the filing of a proper motion as a prerequisite to modification of support, which would be thwarted if a party could convert any pleading into a motion to modify support simply by including a general prayer for relief. *Martin v. Martin*, 79 Ark. App. 309, 87 S.W.3d 817 (2002).

Where mother and father were divorced in 1986, and the father was ordered to pay child support, and where the agency filed a “motion to set support” in 1995, the agency’s failure to raise the issue of child-support arrearages for the years prior to 1995, did not act as a bar by *res judicata*, to seek collection of those arrearages. *Office of Child Support Enforcement v. King*, 81 Ark. App. 190, 100 S.W.3d 95 (2003).

Child support order against a noncustodial parent became final and enforceable as the noncustodial parent’s motion to vacate was never heard and, thus, was deemed denied by operation of law after 30 days. *Jones v. Billingsley*, 363 Ark. 96, 211 S.W.3d 508 (2005).

Trial court did not err in stating that the father’s additional child support obligation had not yet been reduced to judgment. *McWhorter v. McWhorter*, 2009 Ark. 458, 344 S.W.3d 64 (2009).

Calculation.

Trial court erred when it failed to include a prior judgment entered in favor of a mother in a child support case, pursuant to § 9-12-314 and this section, when it was calculating a father’s arrearage; a remand was necessary to determine whether the judgment was applied to the arrearage. If the amount was not applied, the arrearage amount had to be amended to reflect an inclusion of the judgment amount. *Office of Child Support Enforcement v. Harper*, 2013 Ark. App. 171, 426 S.W.3d 544 (2013).

Defenses.

A child support judgment would also be subject to the equitable defenses that apply to all other judgments. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

In a proper case, equitable defenses such as estoppel may apply so as to prevent the collection of past-due child-support payments. *State Office of Child Sup-*

port Enforcement v. Mitchell, 61 Ark. App. 54, 964 S.W.2d 218 (1998).

Order awarding mother past-due child support was upheld because the father had not filed any motion to modify the order on the basis that a later case prohibited child support payments based upon income from Social Security supplemental security income. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004), *aff’d*, 363 Ark. 96, 211 S.W.3d 508 (2005).

Order giving father credit for child support payments from the date of a divorce decree in June 1999 through the end of July 2002, finding support paid in full for that time period, was proper where the father had provided support for the children by allowing the children and the mother to live in housing provided to him as part of his compensation, valued at \$350 per month; the father also provided the sole support for the children for a year when they lived with him. *Office of Child Support Enforcement v. Goff*, 96 Ark. App. 238, 240 S.W.3d 133 (2006).

Equitable Estoppel.

The chancellor did not err in awarding child support arrearages to the mother, but refusing, on the basis of equitable estoppel, to award support for a period of time that the child at issue lived at his sister’s home. *Barnes v. Morrow*, 73 Ark. App. 312, 43 S.W.3d 183 (2001).

Trial court erroneously recognized agreement to reduce child support between parties; evidence on record did not show equitable estoppel on the part of the father. *Shroyer v. Kauffman*, 75 Ark. App. 267, 58 S.W.3d 861 (2001).

Because there was no court order modifying the 1986 child support order, “modified *res judicata*” did not come into play regarding a past opportunity to litigate issues of accrued support, nor was there an equitable basis to prevent the collection of past due child support. *Office of Child Support Enforcement v. King*, 81 Ark. App. 190, 100 S.W.3d 95 (2003).

Exception.

Mother estopped from collecting past due child support from father, where the parents continued to live together after the divorce, and the father was the children’s primary supporter subsequent to the divorce and until the parents sepa-

rated. *Ramsey v. Ramsey*, 43 Ark. App. 91, 861 S.W.2d 313 (1993).

Intent.

Subsection (b) [now (c)] of this section indicates the legislature's intent to incorporate both the general federal rule regarding modification and the exception to this rule. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

Method of Collection.

The fact that a support order provides for income withholding to satisfy accrued support arrearages is irrelevant in determining whether garnishment provides a viable alternative method for collection. *Stewart v. Norment*, 328 Ark. 133, 941 S.W.2d 419 (1997).

This section and § 9-14-235(a) and (c) [now (b)] are consistent with each other. Subsection (b) of this section codifies the rule that child support becomes a judgment when due and is subject to execution or garnishment, although the trial court has some discretion in setting the payments on the arrearage under § 9-14-235(a); and § 9-14-235(c) [now (b)] provides that a parent who is owed child-support arrearages may utilize other enforcement methods to collect the arrearages. *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

Modification.

Trial court did not err in awarding mother past-due child support where the original order of support in 1995 was made prior to the ruling in *Davis*, which held that Arkansas courts could not order child support payments based on income from federal SSI benefits; further, because the case was a one-issue case, which was tried on the pleadings and did not involve child custody, the trial judge did not abuse his discretion in denying father's motion to transfer. *Jones v. Billingsley*, 88 Ark. App. 131, 195 S.W.3d 380 (2004), *aff'd*, 363 Ark. 96, 211 S.W.3d 508 (2005).

A support order remains in force until the obligor files a proper motion seeking modification; thus, the trial court erred in modifying its child-support rulings from \$1000 per month to \$300 per month after hearing testimony as to husband's financial situation because nothing in the record indicated that any such motion for modification had been filed. *Rogers v. Rog-*

ers, 90 Ark. App. 321, 205 S.W.3d 856 (2005).

Circuit court, in figuring father's income, properly ruled that the child support modifications were set on February 6, 2003, the effective date of the filing of the motion to modify; the circuit court's order contained substantial calculations of the father's income based upon previous tax returns that showed a material change in circumstances to justify a modification of child support. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

Trial court's February 10 order provided that the father was to pay \$35 per week in child support, and any changes to his support obligation had to be preceded by a motion to modify his child-support obligation; thus, as father's petition for change of custody contained a proper motion for modification, the trial court abused its discretion in retroactively modifying the father's support obligation back to the February 10 order. *Shipp v. Shipp*, 94 Ark. App. 351, 230 S.W.3d 305 (2006).

In deciding to raise the amount of the father's child support obligation, there was no unpaid child support that would justify a contempt proceeding or invoke the provisions of this section. *Williams v. Williams*, 2009 Ark. App. 484 (2009).

Temporary hearing was not fully completed, and the trial court noted that it lacked enough information to determine the appropriate amount of child support; where a trial court reserved judgment until later determination, there was no error when the trial court made any contemplated adjustments. *Rudder v. Hurst*, 2009 Ark. App. 577, 337 S.W.3d 565 (2009).

Court affirmed the trial court's order concerning the support of appellant's minor child because appellant's assertion that she was entitled to interest under § 9-14-233 and to attorney's fees was barred by *res judicata*, and *res judicata* also barred relitigation of the child-support arrearage issue as the question had already been reduced to judgment by the trial court's original support order under § 9-12-314 and this section. *Williams v. Nesbitt*, 2012 Ark. App. 408, 421 S.W.3d 320 (2012).

Modification of child support could not be based on the father's April 2009 petition for reduction, but the trial court was not wholly without authority to order a

modification; although the father's April 2009 petition had been disposed of, he had filed a new motion on which modification of the August 2010 order could be based, and his motion to calculate his child support obligation was a sufficient basis for the trial court to modify a prior support order. *Browning v. Browning*, 2015 Ark. App. 104, 455 S.W.3d 863 (2015).

There was no rebuttal of the father's testimony regarding his income and the disability income received by his new wife and daughter that helped cover household expenses, and the trial court relied on the father's tax returns in determining his income, which was not clearly erroneous; the court affirmed the reduction, but modified the retroactive application to a different date. *Browning v. Browning*, 2015 Ark. App. 104, 455 S.W.3d 863 (2015).

Because the trial court lacked authority to modify child support based on the April 2009 petition, the amount of payments made and owed had to be recalculated, and the modification could be retroactive only to the father's May 2, 2013 motion; the credit was reversed and the case was remanded to the trial court with instructions to apply the modification as of that date and determine any arrearage or overpayment. *Browning v. Browning*, 2015 Ark. App. 104, 455 S.W.3d 863 (2015).

Child support award was modified on appeal to begin when the father's motion to modify was filed because the circuit court abused its discretion when it awarded retroactive child support beyond the filing date of the father's motion to modify. *Higdon v. Roberts*, 2020 Ark. App. 59, 595 S.W.3d 19 (2020).

Private Support Agreements.

Chancery courts are not to recognize private agreements modifying the amount of child support after July 20, 1987. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

Because § 9-12-312 and this section specifically provide that any decree which contains a provision for the payment of child support shall be a final judgment until either party moves to modify the order, where father did not file his petition to reduce support until over a year after the decree was entered, the unpaid support accrued as originally ordered until the motion to modify the judgment was

filed. *Burnett v. Burnett*, 313 Ark. 599, 855 S.W.2d 952 (1993).

A private agreement between the parents to change the custody arrangement did not modify the support order; any change to an existing order must be made by a court. *Yell v. Yell*, 56 Ark. App. 176, 939 S.W.2d 860 (1997).

Retroactive Effect.

Subsection (b) [now (c)] of this section prohibits only the modification of child support orders which retroactively affect the time period before the petition for modification was filed and proper notice was given to the opposing party. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

The order reducing defendant's child support obligations did not violate subsection (b) [now (c)] of this section since this order affected only obligations that were antecedent to the filing of his petition. *Grable v. Grable*, 307 Ark. 410, 821 S.W.2d 16 (1991).

Arkansas law does not allow a chancery court to make retroactive changes in a person's child-support obligations; retroactive modification may only be assessed from the time that a petition for modification is filed. *Yell v. Yell*, 56 Ark. App. 176, 939 S.W.2d 860 (1997).

Although the trial judge referred to a modification, the judge did not retroactively modify the child-support order; rather the judge clarified the original order that failed to recite the amount of support as required under the guidelines. *Paschal v. Paschal*, 82 Ark. App. 455, 117 S.W.3d 650 (2003).

Circuit court, in reviewing father's adjusted gross income for the years 2001 through 2003, made adjustments to reflect the significant increase in father's income since the initial ruling; thus, it did not err in ordering a retroactive modification of child support. *Hill v. Kelly*, 368 Ark. 200, 243 S.W.3d 886 (2006).

Although the circuit court erred in finding that a temporary order of child support issued by a transferring court terminated upon the transfer, the error was harmless where it set retroactive support during the gap period at an amount equal to the award in the temporary order, and thus, its calculation of arrearages was mathematically the same. *Brown v. Brown*, 2014 Ark. App. 455, 440 S.W.3d 361 (2014).

Statute of Limitations.

While this section provides that child support installments payable through the court registry become final judgments as they accrue, the general ten-year statute of limitations found at § 16-56-114 does not apply to actions to collect such arrearages; instead, the limitations period found at § 9-14-236(c) governs. *Sanderson v. Harris*, 330 Ark. 741, 957 S.W.2d 685 (1997).

Cited: *Gould v. Gould*, 308 Ark. 213, 823 S.W.2d 890 (1992); *Burns v. Burns*, 309 Ark. 602, 832 S.W.2d 251 (1992); *Laroe v. Laroe*, 48 Ark. App. 192, 893 S.W.2d 344 (1995); *Darr v. Bankston*, 327 Ark. 723, 940 S.W.2d 481 (1997); *Cole v. Harris*, 330 Ark. 420, 953 S.W.2d 586 (1997); *Littles v. Flemings*, 333 Ark. 476, 970 S.W.2d 259 (1998); *Frigon v. Frigon*, 89 Ark. App. 180, 201 S.W.3d 436 (2005).

9-14-235. Arrearages — Payment after duty to support ceases — Definition.

(a) If a child support arrearage or judgment exists at the time when any child entitled to support reaches the age of majority, is emancipated, or dies, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support, or an amount to be determined by a court based on the application of guidelines for child support under the family support chart, until such time as the child support arrearage or judgment has been satisfied.

(b) Enforcement through income withholding, intercept of unemployment benefits or workers' compensation benefits, income tax intercept, additional payments ordered to be paid on the child support arrearage or judgment, contempt proceedings, or any other means of collection shall be available for the collection of a child support arrearage or judgment until the child support arrearage or judgment is satisfied.

(c) Income withholding under § 9-14-221 may be used to satisfy a child support arrearage or judgment.

(d) As used in this section, "judgment" means unpaid child support and medical bills, interest, attorney's fees, or costs associated with a child support case when such has been reduced to judgment by the court or become a judgment by operation of law.

(e) The purpose of this section is to allow the enforcement and collection of child support arrearages and judgments after the obligor's duty to pay support ceases.

History. Acts 1989, No. 507, § 1; 1995, No. 1184, § 38; 2001, No. 1248, § 14; 2013, No. 317, § 1.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

ALR. Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th 385.

Right to credit on child-support arrearages for money given directly to child. 119

A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for con-

tributions to housing costs, utility bills, and other alleged household necessities made for child's benefit while child is not living with obligor parent. 123 A.L.R.5th

565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

CASE NOTES

ANALYSIS

In General.
Applicability.
Hardship.

In General.

This section governs actions to collect on child-support judgments to the extent that such actions were not yet barred at the time this section became effective and to the extent that such actions seek only to require the obligor, whose current duty to pay support has ceased, to continue making regular court-ordered child-support payments until such time as the judgment is satisfied. *Malone v. Malone*, 338 Ark. 20, 991 S.W.2d 546 (1999).

Section 9-14-234 and subsections (a) and (c) [now (b)] of this section are consistent with each other; § 9-14-234(b) codifies the rule that child support becomes a judgment when due and is subject to execution or garnishment, although the trial court has some discretion in setting the payments on the arrearage under subsection (a) of this section, and subsection (c) [now (b)] of this section provides that a parent who is owed child-support arrearages may utilize other enforcement methods to collect the arrearages. *Hill v. Hill*, 84 Ark. App. 132, 134 S.W.3d 6 (2003).

Applicability.

Because a mother was seeking to enforce a judgment that ordered a father to pay arrearages, rather than bringing an action to recover accrued child-support

arrearages from an initial support order, § 9-14-236 was not applicable and the contempt action against a father was not time barred. The father could be held in contempt and sent to jail because this section, the applicable statute to enforce the judgment, did not impose a time limitation on the enforcement of child-support judgments. *Johns v. Johns*, 103 Ark. App. 55, 286 S.W.3d 189 (2008).

Trial court did not err in stating that the father's additional child support obligation had not yet been reduced to judgment. *McWhorter v. McWhorter*, 2009 Ark. 458, 344 S.W.3d 64 (2009).

Hardship.

Father required to pay back support to reimburse the state, but at a lower amount than prescribed in the guidelines because of the hardship a higher amount would impose on children he was currently supporting. *Lovelace v. Office of Child Support Enforcement*, 59 Ark. App. 235, 955 S.W.2d 915 (1997).

A chancellor did not err by allowing a noncustodial parent to satisfy the arrearage he owed by making monthly installment payments in the amount of \$225 instead of following the requirements of subsection (a) of this section, where the noncustodial parent requested that the chancellor set the arrearage payments at \$225 per month because of his other financial obligations, including other child support payments. *Office of Child Support Enforcement v. Tyra*, 71 Ark. App. 330, 29 S.W.3d 780 (2000).

9-14-236. Arrearages — Child support limited — Limitations period — Definitions.

(a) As used in this section:

(1) "Accrued child support arrearages" means a delinquency owed under a court order or an order of an administrative process established under state law for support of any child or children that is past due and unpaid;

(2) "Action" means any complaint, petition, motion, or other pleading seeking recovery of accrued child support arrearages;

(3) "Initial support order" means the earliest order, judgment, or decree entered in the case by the court or by administrative process that contains a provision for the payment of money for the support and care of any child or children; and

(4) "Moving party" means any of the following:

(A) The custodial parent;

(B) Any person or agency to whom custody of a minor child has been given or relinquished;

(C) The minor child through his or her guardian or next friend;

(D) A person for whose benefit the support was ordered, within five (5) years of obtaining his or her majority; or

(E) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the custodial parent or person to whom custody has been relinquished or awarded is or has been receiving assistance in the form of Aid to Families with Dependent Children or has contracted with the office for the collection of support.

(b) In any action involving the support of any minor child or children, the moving party shall be entitled to recover the full amount of accrued child support arrearages from the date of the initial support order until the filing of the action.

(c) Any action filed pursuant to subsection (b) of this section may be brought at any time up to and including five (5) years beyond the date the child for whose benefit the initial support order was entered reaches eighteen (18) years of age.

(d) No statute of limitation shall apply to an action brought for the collection of a child support obligation or arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

(e) This section shall apply to all actions pending as of March 29, 1991, and filed thereafter, and shall retroactively apply to all child support orders now existing.

History. Acts 1989, No. 525, § 1; 1991, No. 870, § 2; 1995, No. 1184, § 14.

Publisher's Notes. Acts 1989, No. 525, § 1, was also codified as § 16-56-129 [repealed].

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

ALR. Right to credit against child support arrearages for time child lived in custody of noncustodial parent, other than for visitation, where custodial parent's approval was not in issue or was disputed by parties. 112 A.L.R.5th 185.

Right to credit against child support arrearages for time children spent in custody of noncustodial parent pursuant to visitation or court order. 118 A.L.R.5th

385.

Right to credit on child-support arrearages for money given directly to child. 119 A.L.R.5th 445.

Right to credit against child support arrearages for time child lived with non-custodial parent, other than for visitation or by court order, with approval of custodial parent. 120 A.L.R.5th 229.

Right to credit on child support for con-

tributions to housing costs, utility bills, and other alleged household necessities made for child's benefit while child is not living with obligor parent. 123 A.L.R.5th 565.

Right to credit on child support arrearages for gifts to child. 124 A.L.R.5th 441.

Laches or Acquiescence as Defense, So as to Bar Recovery of Arrearages of Permanent Alimony or Child Support. 22 A.L.R.7th Art. 1 (2017).

Ark. L. Rev. Case Note, *Roark v. Roark*:

An Expansion of the Application of Estoppel to Prohibit the Collection of Child Support Arrearages, 45 Ark. L. Rev. 631.

U. Ark. Little Rock L.J. Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

Moore, Child Support Arrearages: What Statute of Limitations (If Any) Applies?, 19 U. Ark. Little Rock L.J. 487.

U. Ark. Little Rock L. Rev. Annual Survey of Caselaw, Family Law, 24 U. Ark. Little Rock L. Rev. 1021.

CASE NOTES

ANALYSIS

Purpose.

Applicability.

Assignment.

Delay.

Retroactive Application.

Standing.

Statute of Limitations.

Purpose.

The purpose of subsection (b) of this section is to prohibit the court from reducing the arrearages from periodic child support after the payments have already fallen due; the General Assembly did not intend by enacting this subsection to abrogate the general rule that a parent is legally obligated to support his minor child even in the absence of a court order. *Nason v. State Child Support Enforcement Unit*, 55 Ark. App. 164, 934 S.W.2d 228 (1996).

Applicability.

The legislature cannot expand a statute of limitation so as to revive a cause of action already barred, but has the power to affect causes of action not yet barred. *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992).

This section applies retroactively to expand the statute of limitations for causes of action for delinquent child-support payments not barred on the date of its enactment. *Branch v. Carter*, 326 Ark. 748, 933 S.W.2d 806 (1996).

In actions for child-support arrearages, the limitation period found in this section applies, not the ten-year period in § 16-56-114. *Cole v. Harris*, 330 Ark. 420, 953 S.W.2d 586 (1997).

This section is the applicable statute when the Office of Child Support Enforcement

is pursuing collection of support arrearages for support ordered in a prior judgment. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Because a mother was seeking to enforce a judgment that ordered a father to pay arrearages, rather than bringing an action to recover accrued child-support arrearages from an initial support order, this section was not applicable and the contempt action against a father was not time barred. The father could be held in contempt and sent to jail because the applicable statute to enforce the judgment, § 9-14-235, did not impose a time limitation on the enforcement of child-support judgments. *Johns v. Johns*, 103 Ark. App. 55, 286 S.W.3d 189 (2008).

Statute of limitations in this section had no application to the facts, because the limitation applied to "actions," and the father filed no such action; he only requested that the court recognize and credit him the payments he made pursuant to court order during the relevant time periods that child support was due. *McWhorter v. McWhorter*, 2009 Ark. 458, 344 S.W.3d 64 (2009).

Assignment.

A custodial mother's assignment to the Office of Child Support Enforcement (OCSE) of her right to support was appropriate because the child at issue had not yet attained the age of 23 at the time she made the assignment nor at the time OCSE filed an action to recover the arrearages. *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687, *aff'd*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Delay.

Where there was no agreement between the parties to reduce or terminate the right to alimony, and the plaintiff's delay was the result of frustration by another state's laws, the mere fact that plaintiff delayed pursuing rights to obtain a judgment on past due support did not prevent plaintiff from seeking judgment. *Benn v. Benn*, 57 Ark. App. 190, 944 S.W.2d 555 (1997).

Retroactive Application.

Child support actions can be brought at any time up to and including five years beyond the time the child reaches the age of 18 years, and this limitation shall apply retroactively. *Johnson v. Lilly*, 308 Ark. 201, 823 S.W.2d 883 (1992).

The limitations period of this section, as amended by Acts 1991, No. 870, retroactively applied to all delinquent payments which accrued after March 29, 1986. *Branch v. Carter*, 54 Ark. App. 70, 923 S.W.2d 874 (1996), *aff'd*, 326 Ark. 748, 933 S.W.2d 806 (1996).

The trial court had authority to award a judgment for retrospective child support. *Nason v. State Child Support Enforcement Unit*, 55 Ark. App. 164, 934 S.W.2d 228 (1996).

This section cannot be retroactively applied beyond March 29, 1986; any cause of action for child-support arrearages accruing prior to March 29, 1986, is barred. *King v. State, Office of Child Support Enforcement*, 58 Ark. App. 298, 952 S.W.2d 180 (1997).

Standing.

Administrator of mother's estate had standing to sue to cover the arrears the father owed in child support, insurance premiums, and medical expenses at the time of her death, even though the father had custody of the children at the time of the suit. *Darr v. Bankston*, 327 Ark. 723, 940 S.W.2d 481 (1997).

Because the General Assembly did not confer the right to collect arrearages only upon the parent having physical custody of a minor child until the child reached majority, and then only upon the adult child, the mother retained the right to pursue child-support arrearages even af-

ter the child reached age 18. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

This section does not place a limitation on who can pursue an action for collection of child-support arrearages from the list of possible parties. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Statute of Limitations.

There is no constitutional impediment, except in title to property cases, to increasing the length of a limitation period and making the increase retroactive to cover claims already in existence; however, the General Assembly may not expand a limitation period so as to revive a claim already barred. *Chunn v. D'Agostino*, 312 Ark. 141, 847 S.W.2d 699 (1993).

While § 9-14-234 provides that child support installments payable through the court registry become final judgments as they accrue, the general ten-year statute of limitations found at § 16-56-114 does not apply to actions to collect such arrearages; instead, the limitations period found in subsection (c) of this section governs. *Sanderson v. Harris*, 330 Ark. 741, 957 S.W.2d 685 (1997).

Because the mother filed her action within five years of the child's 18th birthday, under either Arkansas or California law, she timely filed her action to collect child support arrearages. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

This section allows a custodial parent to file a petition to collect child-support arrearages after the child has attained the age of majority but prior to his twenty-third birthday. *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687, *aff'd*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Cited: *Green v. Bell*, 308 Ark. 473, 826 S.W.2d 226 (1992); *Ark. Office of Child Support Enforcement v. House*, 320 Ark. 423, 897 S.W.2d 565 (1995); *Ark. Dep't of Human Servs. v. Harris*, 322 Ark. 465, 910 S.W.2d 221 (1995); *Office of Child Support Enforcement v. Pylon*, 363 Ark. 521, 215 S.W.3d 637 (2005).

9-14-237. Expiration of child support obligation.

(a)(1) Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:

(A) When the child reaches eighteen (18) years of age unless the child is still attending high school;

(B) If the child is still attending high school, upon the child's high school graduation or the end of the school year after the child reaches nineteen (19) years of age, whichever is earlier;

(C) When the child:

(i) Is emancipated by a court of competent jurisdiction;

(ii) Marries; or

(iii) Dies;

(D) Upon the marriage of the parents of the child to each other; or

(E) Upon the entry of a final decree of adoption or an interlocutory decree of adoption that has become final under the Revised Uniform Adoption Act, § 9-9-201 et seq., and thereby relieves the obligor of all parental rights and responsibilities.

(2) However, any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied pursuant to § 9-14-235.

(b)(1) If the obligor has additional child support obligations after the duty to pay support for a child terminates, then either the obligor, custodial parent, physical custodian, or the Office of Child Support Enforcement of the Revenue Division of Department of Finance and Administration, within thirty (30) days subsequent to the expiration of the ten-day period allowed for the notification as provided in subdivision (b)(5) of this section, may file a motion with a court of competent jurisdiction requesting that the court determine the amount of the child support obligation for the remaining children.

(2) The remaining obligations, subsequent to the expiration of the thirty-day period contained in subdivision (b)(1) of this section, shall be adjusted by operation of law to an amount to be determined by using the most recent version of the family support chart pursuant to § 9-12-312(a)(3) for any remaining children for whom an obligation for child support exists.

(3) If the most recent child support order either was entered prior to the adoption of the family support chart by the Supreme Court or the support amount, as indicated by the order, deviated from the family support chart, then the issue of the amount of the obligor's child support obligation shall be decided by a court of competent jurisdiction.

(4)(A) In the event a review is requested, the court shall apply the family support chart for the remaining number of children from the date of the termination of the duty, subject to any changed circumstances, which shall be noted in writing by the court.

(B) Deviation from the family support chart shall be noted in the court order or on the record, as appropriate.

(5)(A) The obligor shall provide written notification of the termination of the duty of support to the custodial parent, the physical custodian, the clerk of the court responsible for receipt of the child support payments, the obligor's employer, if income withholding is in effect, and the office, if applicable, within ten (10) days of the termination of the duty of support.

(B) The obligor shall enclose with the written notification of termination a copy of the most recent child support order.

(C) The notification shall state the name and age of each child for whom the obligation to pay child support has ceased and the name and age of children set out in prior terminations of child support made pursuant to this subsection.

(c) No statute of limitations shall apply to an action brought for the collection of a child support obligation of arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support.

History. Acts 1993, No. 326, § 1; 1999, No. 1075, § 1; 2003, No. 1020, § 7; 2007, No. 337, § 1; 2009, No. 635, § 1.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

RESEARCH REFERENCES

Ark. L. Rev. The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses, 56 Ark. L. Rev. 93.

Brittany Horn, Case Note: Who's Your Daddy? State v. Perry and Its Impact on Paternity and the Rights of Adjudicated Fathers in Arkansas, 66 Ark. L. Rev. 1059 (2013).

U. Ark. Little Rock L.J. Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

U. Ark. Little Rock. L. Rev. Annual Survey of Case Law, Family Law, 28 U. Ark. Little Rock L. Rev. 739.

CASE NOTES

ANALYSIS

Applicability.

Agreements.

Child With a Disability.

Special Circumstances.

Termination of Support.

Applicability.

Where parties' eldest son turned 18 on July 5, 1992, husband's child support obligation continued under § 9-14-234; however, under this section, husband's child support obligation for that son terminated by operation of law on August 13, 1993, the effective date of this section, and the chancellor erred in awarding child support arrearage for eldest son beyond that

date. *James v. James*, 52 Ark. App. 29, 914 S.W.2d 773 (1996).

Recalculation of support, based on the reduced value set forth in the family support guidelines for one child after an older child turned 18, was not an improper attempt to retroactively modify a judgment. *Mixon v. Mixon*, 65 Ark. App. 240, 987 S.W.2d 284 (1999).

A chancellor did not err by calculating a reduced amount of arrearage owed by the noncustodial parent by taking into account those child-support obligations that terminated by operation of this section upon the graduation from high school of the parties' children. *Office of Child Support Enforcement v. Tyra*, 71 Ark. App. 330, 29 S.W.3d 780 (2000).

Where father agreed to pay child support in the amount of \$1,200 per month, which was above the amount required under the child support chart, so that the mother could use child support funds to pay tuition for both children to attend private school, appellate court held that the “child support” provision and the “college expenses” provision of the decree had to be read together, and concluded that it was the intent of the parties that the father’s child support obligation would cease upon each child reaching the age of majority; however, if a child chose to attend college, the parties then agreed to share the expense of supporting the child while in college. *Harris v. Harris*, 82 Ark. App. 321, 107 S.W.3d 897 (2003).

Agreements.

Where a mother and the Office of Child Support Enforcement entered into a proposed agreement regarding child support arrearages after the parties’ son reached the age of 18 and custody of their daughter was changed to the father, it was not error to refuse to follow the agreement, because the trial court was not bound by an independent agreement concerning child support and the trial court retained jurisdiction over child support. *Roark v. Office of Child Support Enforcement*, 101 Ark. App. 382, 278 S.W.3d 114 (2008).

Child With a Disability.

Circuit court properly concluded that the father’s child support obligation for a child with a disability did not terminate automatically when the child turned 18 and graduated from high school as this section did not automatically terminate the continuing, common-law duty to support a child with a disability. *Guthrie v. Guthrie*, 2015 Ark. App. 108, 455 S.W.3d 839 (2015).

This section sets forth the general rule that parental support automatically ceases when a child reaches the milestones that traditionally signal emancipation. However, the statute does not automatically terminate a parent’s continuing, common-law duty to support a child with a disability upon attaining his majority and who needs further support. *Guthrie v. Guthrie*, 2015 Ark. App. 108, 455 S.W.3d 839 (2015).

Circuit court did not err by finding that a father’s child support obligation did not

automatically terminate at the age of majority due to the fact that the child at issue was a child with a disability. There was no error in addressing the issue at the time modification was sought because the child at issue was a child with a disability at the time he reached the age of majority and still resided with his mother at the time of the modification attempt. *Miller v. Ark. Office of Child Support Enforcement*, 2015 Ark. App. 188, 458 S.W.3d 733 (2015).

Special Circumstances.

Where child had reached the age of majority and had finished one year as a student at the University of Arkansas, even though he played in the University Band and when he went on band trips had to pay a portion of the cost of room and board, and even though he had allergies and had to take allergy medicine, there was nevertheless no showing of special circumstances that would justify an order of support. *Aikens v. Lee*, 53 Ark. App. 1, 918 S.W.2d 204 (1996).

The chancellor erred in terminating child support on the ground that the child at issue should have graduated from high school by his 18th birthday where the child’s graduation was delayed because both parties agreed that the child should repeat second grade; however, the termination of child support was nevertheless affirmed because the stipulations of the parties indicated that the child spent only 25 percent of his time in the custodial parent’s home. *Office of Child Support Enforcement v. Calbert*, 70 Ark. App. 520, 20 S.W.3d 450 (2000).

Trial court erred in reinstating child support for the parties’ daughter who was emancipated and had reached the age of majority where there was no medical evidence or testimony as to the extent of the daughter’s alleged impairment following an automobile accident other than the personal opinions of the parties and their daughter. *Rogers v. Rogers*, 83 Ark. App. 206, 121 S.W.3d 510 (2003).

Except for personal items, all of the needs of the parties’ adult son, who was an individual with an intellectual disability, were covered by his SSI check, including housing, utilities, food, transportation, or phone bills; also, his pharmacy bills were covered expenses. Furthermore, he had approximately \$300 in earned income and a small amount left from his SSI check

after his other expenses were paid to purchase personal items; thus, the son's move into a group home from his mother's home constituted a sufficient change in circumstances to warrant termination of the father's child-support obligation. *Bagley v. Williamson*, 101 Ark. App. 1, 269 S.W.3d 837 (2007).

Child support determinations were not moot even though both sons had since turned 18 as the determinations addressed back child support, and because the order provided for support until the youngest son either turned 18 or graduated from high school, whichever occurred later, and that son had not yet graduated from high school. *Maxwell v. Maxwell*, 2020 Ark. App. 23, 593 S.W.3d 499 (2020).

Termination of Support.

Because the duty to pay child support terminates by operation of law, the Arkansas Legislature did not intend that the notice provision of subdivision (b)(5)(A) of this section require mandatory or strict compliance; therefore, a trial court should have calculated a father's obligation based on the amount owed for two minor children after a third child turned 18. *Ward v. Doss*, 361 Ark. 153, 205 S.W.3d 767 (2005).

In a divorce case, the trial court did not err by ordering former husband to pay former wife \$100 per month in alimony because the evidence showed that he had the ability to pay, he was not responsible for child support after the child's graduation from high school, and the child's college expenses were not considered; moreover, husband's arguments concerning wife's decision to move and her accountability for her financial situation were

rejected. *Kuchmas v. Kuchmas*, 368 Ark. 43, 243 S.W.3d 270 (2006).

Because a minor child had died, a mother was unable to bring a child support action against a father under § 9-14-105(b) since the mother no longer had physical custody of the child; moreover, the father's obligation to support the child terminated upon her death under subdivision (a)(1)(B) [now (a)(1)(C)] of this section. *Hardy v. Wilbourne*, 370 Ark. 359, 259 S.W.3d 405 (2007), cert. denied, 552 U.S. 1183, 128 S. Ct. 1245, 170 L. Ed. 2d 65 (2008).

Where a default judgment was entered in paternity proceedings and the adjudicated father's support obligation was established in 1995, the Office of Child Support Enforcement instituted proceedings in 2005 to recover support arrearages, and the adjudicated father requested a paternity test, the circuit court erred in granting the father's motion because the motion was untimely. Section 9-10-115(e)(1)(A) allows an adjudicated father one paternity test during any time period in which he is required to pay child support and the father's child support obligation terminated under this section when the child reached the age of majority. *State v. Perry*, 2012 Ark. 106 (2012).

The period that the father was "required to pay child support" ended under this section when the child turned 18; likewise, the period of time in which the father could seek a paternity test also ended when the child turned 18. *State v. Perry*, 2012 Ark. 106 (2012).

Cited: *Laroe v. Laroe*, 48 Ark. App. 192, 893 S.W.2d 344 (1995).

9-14-238. Collection of support obligations.

(a) The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to enter into professional service contracts with private individuals or businesses and public agencies concerning the establishment, and enforcement through court-ordered proceedings, of the collection, monitoring, and distribution of support obligations, including service of process as defined by § 9-14-206(d).

(b)(1) The Arkansas Title IV-D child support enforcement agency may collect unreimbursed public or medical assistance under a cooperative agreement with the state's Title IV-A or Medicaid agencies for any unreimbursed public or medical assistance owed the state.

(2) Under any cooperative agreement that disallows the expenditure of federal Title IV-D funds, Title IV-D expenditures for activities associated with the recovery of state Medicaid or unreimbursed public assistance funds shall be paid to the Title IV-D agency by the state agency for which the funds are recovered.

History. Acts 1993, No. 1249, §§ 1, 2; 1997, No. 1296, § 32.

Publisher’s Notes. The reference in this section to “Title IV-A or Medicaid agencies” probably refers to divisions of the Department of Human Services and the reference to “Title IV-D agency” probably refers to the Office of Child Support Enforcement.

U.S. Code. The references in this sec-

tion to “Title IV-A” and “Title IV-D” are presumably references to Titles IV-A and IV-D of the Social Security Act. Title IV-A is codified as 42 U.S.C. § 601 et seq., and Title IV-D is codified as 42 U.S.C. § 651 et seq.

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

9-14-239. Suspension of license for failure to pay child support — Definitions.

(a) As used in this section:

(1) “Department” means the Department of Finance and Administration or its duly authorized agents;

(2) “License” means an Arkansas driver’s license issued pursuant to the Motor Vehicle Driver’s License Act, § 27-16-101 et seq., and § 27-20-101 et seq., or an occupational, professional, or business license regulated under Title 17 of this Code and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27 of this Code;

(3) “Office” means the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration;

(4) “Other licensing entity” means any other state agency, department, board, commission, municipality, or any entity within the State of Arkansas or the United States that issues or renews an occupational, professional, or business license regulated under Title 17 of this Code and all other licenses regulated under Titles 2-6, 8, 9, 14, 15, 20, 22, 23, and 27 of this Code; and

(5) “Permanent license plate” means the license plate, issued by the department, that by law must be affixed to every vehicle as defined by § 27-14-1002 and every motorized cycle as defined by § 27-20-101.

(b)(1)(A) Unless an obligor executes an installment agreement or makes other necessary and proper arrangements with the office, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor whenever the office determines that one (1) of the following conditions exists:

(i) The obligor is delinquent on a court-ordered child support payment or an adjudicated arrearage in an amount equal to three (3) months’ obligation or more; or

(ii) The obligor is the subject of an outstanding failure to appear warrant, a body attachment, or a bench warrant related to a child support proceeding.

(B) Prior to the notification to suspend the license of the obligor, the office shall determine whether the obligor holds a license or permanent license plate with the department or other licensing entity.

(2)(A) The office shall notify the obligor that a request will be made to the department to suspend the license or permanent license plate sixty (60) days after the notification unless a hearing with the office is requested in writing within thirty (30) days to determine whether one (1) of the conditions of suspension does not exist.

(B) Notification shall be sufficient under this subdivision (b)(2) if mailed to the obligor at either the last known address provided to the court by the obligor pursuant to § 9-14-205 or to the address used by the obligor on the license or the application for a permanent license plate.

(c) Following a determination by the office under subdivision (b)(1) of this section, the office shall notify the department or other licensing entity to suspend the license or permanent license plate of the obligor.

(d)(1) The department or other licensing entity, upon receipt of the notification, shall immediately suspend the license or permanent license plate of the obligor.

(2) This suspension shall remain in effect until the department or other licensing entity is notified by the office to release the suspension.

(e)(1) If the obligor enters into an installment agreement or makes other necessary and proper arrangements with the office to pay child support, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor.

(2) In the case of fraud or mistake, the office shall immediately notify the department or other licensing entity to restore the license or permanent license plate of the obligor, as appropriate.

(f) The office and the department are authorized to promulgate rules necessary to carry out this section in the interests of justice and equity.

(g) The office is authorized to seek an injunction in the circuit court of the county in which the child support order was entered, restraining the obligor from driving or from any licensed or permitted activity during the time the obligor's license or permanent license plate is suspended.

(h)(1)(A) Any obligor whose license or permanent license plate has been suspended may appeal to the circuit court of the county in which the child support order was entered or transferred, within thirty (30) days after the effective date of the suspension, by filing a petition with a copy of the notice of the suspension attached, or with a copy of the final administrative hearing decision of the office, with the clerk of the circuit court and causing a summons to be served on the Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(B) For persons paying child support pursuant to § 9-17-501 or § 9-17-507, the foreign order shall be registered by the office pursuant to § 9-17-601 et seq.

(2) The case shall be tried de novo.

(3) The circuit judges are vested with jurisdiction to determine whether the petitioner is entitled to a license or permanent license plate or whether the decision of the hearing officer should be affirmed, modified, or reversed.

(i) Nothing provided in this section shall be interpreted to prohibit the circuit court from suspending a permanent license plate or a license through contempt proceedings resulting from the nonpayment of child support.

History. Acts 1995, No. 752, § 1; 1997, No. 1296, § 33; 1999, No. 1514, §§ 17, 18; 2003, No. 1020, § 8; 2003, No. 1185, § 17; 2019, No. 315, § 715.

Amendments. The 2019 amendment deleted “and regulations” following “rules” in (f).

Meaning of “this Code”. See § 1-2-113(b).

Cross References. For child support enforcement guidelines, see the Appendix at the end of this subtitle.

Suspension of commercial driver’s license for delinquent child support, § 27-23-125.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Statutes Providing for Re-

vocation of Driver’s License for Failure to Pay Child Support. 30 A.L.R.6th 483.

CASE NOTES

Cited: State, Office of Child Support Enforcement v. Ross, 329 Ark. 1, 945 S.W.2d 374 (1997).

9-14-240. Expiration of income withholding.

(a)(1) Income withholding for child support shall terminate by operation of law when one (1) of the conditions set out in § 9-14-237(a) is met.

(2) However, in no event shall income withholding for child support terminate:

(A) When a current child support obligation exists; or

(B) When a child support arrearage exists, until such time as the arrearage has been satisfied.

(b)(1) If there are no child support arrearages, the obligor may terminate income withholding for child support without petitioning the court by giving written notice, in person or by certified mail, to the obligor’s employer, the custodial parent or physical custodian, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, the Arkansas Child Support Clearinghouse, and the clerk of the court.

(2) The notice shall be given no earlier than thirty (30) days before the termination of the duty to pay support, and shall state:

(A) The name and address of the obligor;

(B) The name and address of the obligor’s employer;

- (C) That income withholding for child support will be terminated;
- (D) The date of intended termination;
- (E) The basis for termination of income withholding; and
- (F) That the custodial parent or physical custodian, the office, or the clerk of the court has the right to file written objection to the termination.

(3) The written objection to the termination shall:

(A) Be made by certified mail to the obligor and the obligor's employer within ten (10) days after receipt of the notice of intent to terminate income withholding for child support;

(B) State that the obligor's duty to pay child support has not been fulfilled as required by court order; and

(C) Set forth the reasons for nonfulfillment.

(4) If a written objection is filed as provided in this section, then income withholding for child support shall continue until such time as an order is entered that terminates, alters, or amends income withholding for child support.

(c)(1) Income withholding for child support may be terminated without petitioning the court by filing with the clerk of the court and submitting to the obligor's employer an affidavit attested to by the obligor, the custodial parent or physical custodian, and the office.

(2) The affidavit shall state:

(A) The name and address of the obligor and the custodial parent or physical custodian;

(B) The name and address of the obligor's employer;

(C) The style of the court case and number;

(D) That one (1) of the conditions set forth in § 9-14-237(a) has been met;

(E) The date that income withholding for child support shall terminate;

(F) That there are no child support arrearages; and

(G) That the office by its agent, designee, or contractor, whose name and address is provided, has determined that no debt to the state is owing in the cause based on an assignment of rights under §§ 9-14-109 and 20-77-109.

(d)(1) In any action to reinstate income withholding for child support, and when the court determines that income withholding for child support was wrongly terminated pursuant to subsection (b) or subsection (c) of this section, the court shall award costs and a minimum of ten percent (10%) of the support amount due as attorney's fees to the prevailing party.

(2)(A) If the custodial parent or physical custodian, the office, or the clerk of the court objects to the termination of income withholding for child support and a petition is filed for an order terminating income withholding for child support and the obligor prevails, the court may award attorney's fees and costs to the obligor.

(B) However, there shall be no award for attorney's fees and costs against the office or the clerk of the court.

(e) Notices of intent to terminate income withholding for child support filed by the obligor, and any written objection filed by the custodial parent or physical custodian, the office, or the clerk of the court, shall be executed under penalty for false swearing.

(f)(1) If a court determines that the amount withheld for child support exceeded the obligor's child support obligation, the obligor shall be entitled to reimbursement.

(2) The court may order the custodial parent or physical custodian to repay the excess amounts withheld and may refer to the family support chart to fix a schedule of repayments.

History. Acts 1995, No. 1075, § 1; enforcement guidelines, see the Appendix 1997, No. 1296, § 34. at the end of this subtitle.

Cross References. For child support

9-14-241. Referrals for criminal prosecution.

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall refer to the prosecuting attorney of the appropriate judicial district for prosecution under § 5-26-401 and any other applicable criminal statute, all cases in which:

(1) The office has had enforcement responsibility for at least twelve (12) consecutive months;

(2) More than ten thousand dollars (\$10,000) in child support is owed and remains unpaid; and

(3) Regular child support payments are not being received.

(b) A referral under subsection (a) of this section shall contain the following information:

(1) An affidavit signed by the custodian of the child receiving court-ordered child support payments stating:

(A) Whether or not anything of value has been received from the person obligated to make the child support payments in lieu of child support payments;

(B) Any known income sources of the person obligated to make the child support payments; and

(C) A request that the criminal offense of nonsupport be prosecuted;

(2) An affidavit from the office detailing the:

(A) Date the child support arrearage began to accrue;

(B) Name of each recipient and the amount of unpaid child support owed to each recipient; and

(C) Last known address of the person obligated to make the child support payments;

(3) A certified copy of the court order and any modifications of the court order mandating payment of child support;

(4) A certified copy of the payment history of the person obligated to make the child support payments; and

(5) A list of possible witnesses and known contact information.

(c) Within thirty (30) days of receiving a referral under this section, the prosecuting attorney will send the office a:

(1) Copy of the criminal information or arrest warrant if a decision to file charges has been made; or

(2) Notice of any deficiencies in the referral.

(d) Nothing in this section limits the ability of the office with respect to a case over which it has enforcement responsibility to:

(1) Refer the case for criminal prosecution if the elements of the crime of nonsupport under § 5-26-401 appear to be present; or

(2) Continue to pursue all available civil remedies in connection with the case.

History. Acts 2007, No. 714, § 1.

9-14-242. Report of nonsupport payments.

(a)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide individual reports to the county circuit clerk concerning money received by the office in payment of arrearages owed by a person convicted of nonsupport under § 5-26-401.

(2) The reports shall be provided each month.

(b) Upon receipt of the reports from the office, the county circuit clerk shall deduct the amounts stated on the report from the outstanding balance in the circuit clerk's file of the amount of nonsupport restitution owed by the individual.

History. Acts 2009, No. 1292, § 1.

SUBCHAPTER 3 — REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

[Repealed.]

SECTION.

9-14-301 — 9-14-344. [Repealed.]

9-14-301 — 9-14-344. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 1993, No. 468, § 8. The subchapter was derived from the following sources:

9-14-301. Acts 1969, No. 182, § 1; A.S.A. 1947, § 34-2401.

9-14-302. Acts 1969, No. 182, § 2; A.S.A. 1947, § 34-2402.

9-14-303. Acts 1969, No. 182, § 3; A.S.A. 1947, § 34-2403.

9-14-304. Acts 1969, No. 182, § 4; A.S.A. 1947, § 34-2404.

9-14-305. Acts 1969, No. 182, § 5; A.S.A. 1947, § 34-2405.

9-14-306. Acts 1969, No. 182, § 6; A.S.A. 1947, § 34-2406.

9-14-307. Acts 1969, No. 182, § 7; A.S.A. 1947, § 34-2407.

9-14-308. Acts 1969, No. 182, § 8; A.S.A. 1947, § 34-2408.

9-14-309. Acts 1969, No. 182, § 9; A.S.A. 1947, § 34-2409.

9-14-310. Acts 1969, No. 182, § 10; 1979, No. 798, § 1; A.S.A. 1947, § 34-2410.

9-14-311. Acts 1969, No. 182, § 11; A.S.A. 1947, § 34-2411.

- 9-14-312. Acts 1969, No. 182, § 12; A.S.A. 1947, § 34-2412.
 9-14-313. Acts 1969, No. 182, § 13; A.S.A. 1947, § 34-2413.
 9-14-314. Acts 1969, No. 182, § 14; A.S.A. 1947, § 34-2414.
 9-14-315. Acts 1969, No. 182, § 15; A.S.A. 1947, § 34-2415.
 9-14-316. Acts 1969, No. 182, § 16; A.S.A. 1947, § 34-2416.
 9-14-317. Acts 1969, No. 182, § 17; A.S.A. 1947, § 34-2417.
 9-14-318. Acts 1969, No. 182, § 18; A.S.A. 1947, § 34-2418.
 9-14-319. Acts 1969, No. 182, § 19; A.S.A. 1947, § 34-2419.
 9-14-320. Acts 1969, No. 182, § 20; A.S.A. 1947, § 34-2420.
 9-14-321. Acts 1969, No. 182, § 21; A.S.A. 1947, § 34-2421.
 9-14-322. Acts 1969, No. 182, § 22; A.S.A. 1947, § 34-2422.
 9-14-323. Acts 1969, No. 182, § 23; A.S.A. 1947, § 34-2423.
 9-14-324. Acts 1969, No. 182, § 24; A.S.A. 1947, § 34-2424.
 9-14-325. Acts 1969, No. 182, § 25; A.S.A. 1947, § 34-2425.
 9-14-326. Acts 1969, No. 182, § 26; A.S.A. 1947, § 34-2426.
 9-14-327. Acts 1969, No. 182, § 27; A.S.A. 1947, § 34-2427.
 9-14-328. Acts 1969, No. 182, § 28; A.S.A. 1947, § 34-2428.
 9-14-329. Acts 1969, No. 182, § 29; A.S.A. 1947, § 34-2429.
 9-14-330. Acts 1969, No. 182, § 30; A.S.A. 1947, § 34-2430.
 9-14-331. Acts 1969, No. 182, § 31; A.S.A. 1947, § 34-2431.
 9-14-332. Acts 1969, No. 182, § 32; A.S.A. 1947, § 34-2432.
 9-14-333. Acts 1969, No. 182, § 33; A.S.A. 1947, § 34-2433.
 9-14-334. Acts 1969, No. 182, § 34; A.S.A. 1947, § 34-2434.
 9-14-335. Acts 1969, No. 182, § 35; A.S.A. 1947, § 34-2435.
 9-14-336. Acts 1969, No. 182, § 36; A.S.A. 1947, § 34-2436.
 9-14-337. Acts 1969, No. 182, § 37; A.S.A. 1947, § 34-2437.
 9-14-338. Acts 1969, No. 182, § 38; A.S.A. 1947, § 34-2438.
 9-14-339. Acts 1969, No. 182, § 39; A.S.A. 1947, § 34-2439.
 9-14-340. Acts 1969, No. 182, § 40; A.S.A. 1947, § 34-2440.
 9-14-341. Acts 1969, No. 182, § 41; A.S.A. 1947, § 34-2441.
 9-14-342. Acts 1969, No. 182, § 42; A.S.A. 1947, § 34-2442.
 9-14-343. Acts 1969, No. 182, § 43.
 9-14-344. Acts 1969, No. 182, § 44.
 For current law, see § 9-17-101 et seq.

SUBCHAPTER 4 — STATE COMMISSION ON CHILD SUPPORT

SECTION.

9-14-401. [Repealed.]

9-14-402. Staff.

SECTION.

9-14-403. Duties.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Family Law, 12 U. Ark. Little Rock L.J. 631.

9-14-401. [Repealed.]

Publisher's Notes. This section, concerning creation of the State Commission on Child Support, was repealed by Acts 1999, Nos. 1508 and 1514. Acts 1999, No. 1508, § 7(h), repealed the version as amended by Acts 1997, No. 250 and Acts 1999, No. 1514 repealed the version as

amended by Acts 1997, No. 1354. Pursuant to § 1-2-207, the amendment by Acts 1999, No. 1508, § 4, of subsection (d) of the version amended by Acts 1997, No. 1354, is deemed superseded by the repeal by Acts 1999, No. 1514. The section was derived from Acts 1989, No. 682, § 1;

1993, No. 1242, § 10; 1995, No. 1184, § 11; 1999, No. 1508, §§ 4, 7(h); 1999, No. § 15; 1997, No. 250, § 51; 1997, No. 1354, 1514, § 19.

9-14-402. Staff.

The Administrator of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall assign staff of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration to assist the State Commission on Child Support [repealed] in carrying out its duties and responsibilities.

History. Acts 1989, No. 682, § 1; 1995, No. 1184, § 16. the State Commission on Child Support [repealed], referred to in this section, see the Publisher's Note to § 9-14-401.

Publisher's Notes. As to the repeal of

9-14-403. Duties.

The State Commission on Child Support [repealed] shall have the following duties:

(1) To examine, investigate, and study the operation of the state's child support system to determine the extent to which such system is successful in securing support and parental involvement for children;

(2) To make recommendations for legislation which would clarify and improve state laws in the areas of visitation, standards for support, enforcement of interstate obligations, paternity establishment, and support collection methods;

(3) To evaluate the availability, cost, and effectiveness of services for support enforcement to children receiving aid and those not receiving aid and assist the Title IV-D agency in program improvements or enhancements which would increase the availability of support enforcement;

(4) To examine proposed legislation and make recommendations concerning compliance with federal requirements for support collection; and

(5) To review expedited process reporting for child support cases pending in the judicial districts from data furnished by the Administrative Office of the Courts and assist in compliance with case processing standards.

History. Acts 1989, No. 682, § 1.

Publisher's Notes. The reference to "Title IV-D agency" in (3) probably refers to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

As to the repeal of the State Commis-

sion on Child Support [repealed], referred to in this section, see the Publisher's Note to § 9-14-401.

U.S. Code. Title IV-D, referred to in this section, refers to Title IV-D of the Social Security Act, which is codified as 42 U.S.C. § 651 et seq.

SUBCHAPTER 5 — HEALTHCARE COVERAGE

SECTION.

- 9-14-501. Definition.
- 9-14-502. Income withholding authorized.
- 9-14-503. Minor children — Certain provisions denying or restricting coverage void.
- 9-14-504. Communication with custodial parent or assignee.
- 9-14-505. No direct offset to child support.
- 9-14-506. Effective date of income withholding order — Applicability.
- 9-14-507. Priority of income withholding claims.
- 9-14-508. Persons subject to income withholding — Ground for contest.

SECTION.

- 9-14-509. Notice to noncustodial parent.
- 9-14-510. Determination of contest.
- 9-14-511. Notice to employer.
- 9-14-512. Objection of employer.
- 9-14-513. Employer bound by court order until further notice.
- 9-14-514. Notification of court by employer of termination.
- 9-14-515. Employer prohibited from taking action against parent for income withholding.
- 9-14-516. Enforcing medical support in Title IV-D cases.

Effective Dates. Acts 1991, No. 368, § 18: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected and medical insurance requirements be enforced in the most expedient manner for all children of this state; that the smooth transition from current requirements to those of this act require that the provisions become effective upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1179, § 9: Apr. 11, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly that Arkansas law governing health care coverage for minor children does not conform with current federal requirements set forth in Section 13623 of the Omnibus Budget Reconciliation Act of 1993; that it is in the best interests of the people of the state of Arkansas that the provisions of this act be given immediate effect so that federal

funding is not jeopardized and that minor children entitled to health care services be able to receive those services. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2005, No. 506, § 54: Mar. 2, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of this state as to insurance regulation and the Governmental Bonding Board, among others, are inadequate for the protection of the public, and the immediate passage of this act is necessary in order to provide for the adequate protection of the public. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey —
Family Law, 14 U. Ark. Little Rock L.J.
799.

9-14-501. Definition.

As used in this subchapter, “healthcare coverage” includes, but need not be limited to, insurance of human beings against bodily injury, disability, or death by accident or accidental means, or the expense thereof, or disablement or expense resulting from sickness, and every insurance appertaining thereto.

History. Acts 1991, No. 368, § 2.

9-14-502. Income withholding authorized.

(a) In all decrees and orders that direct the noncustodial parent to provide and maintain healthcare coverage for any child, the court shall include a provision directing the employer to deduct from money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to provide for premiums for healthcare coverage offered by the employer.

(b)(1) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to garnish wages, salary, or other employment income pursuant to § 16-110-101 et seq. and withhold amounts from a state tax refund due any person who:

(A) Is required by a court or administrative order to provide coverage for costs of health services to a child who is eligible for medical assistance under this section; and

(B) Has received payment from a third party for the costs of such services for the child but has not used such payment to reimburse, as appropriate, the custodial parent, the provider of such services, the Department of Human Services, or the office for expenditures for such costs.

(2) Any claims for current or past-due child support shall have priority over any claim for the costs of such services.

History. Acts 1991, No. 368, § 1; 1995,
No. 1179, § 1.

9-14-503. Minor children — Certain provisions denying or restricting coverage void.

(a)(1) No contract of individual or group healthcare coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services

corporation shall, directly or indirectly, restrict or deny healthcare coverage due to the fact that the minor child does not reside with the noncustodial parent or that the parent-child relationship was established through a paternity action or that the minor child is covered through the state-administered Medicaid program or that the minor child is not claimed as a dependent on the noncustodial parent's federal or state income tax return.

(2)(A) Furthermore, no insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall, directly or indirectly, restrict or deny benefits to a minor child because the child lives outside of its service area.

(B) Benefits provided outside the service area shall be in accordance with the terms and conditions of the healthcare plan.

(b)(1) Each contract of individual or group healthcare coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall provide for the immediate enrollment of the minor child or children.

(2) The minor child shall be enrolled immediately in the noncustodial parent's healthcare plan upon submission of the notice as provided in § 9-14-511 or, in cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as required in § 9-14-516.

(c) Except for nonpayment of premium, no contract of individual or group healthcare coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall permit, directly or indirectly, the removal of a minor child from enrollment for coverage unless the insurer has received evidence in writing that the court or administrative order providing for the healthcare coverage is no longer in effect or that the child is or will be enrolled in comparable healthcare coverage through another insurer that will take effect not later than the effective date of such disenrollment.

(d) No contract of individual or group healthcare coverage sold, delivered, issued for delivery, renewed, or offered for sale in this state by any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation shall, directly or indirectly, impose requirements on the office that are any different from those applicable to any other agent or assignee assigned the rights of a person eligible for medical assistance under this section and covered for health benefits from the insurer.

(e) Any insurance policy provision that would deny or restrict coverage to a minor child under such circumstances shall be void as against public policy.

History. Acts 1991, No. 368, § 3; 1993, No. 1242, § 14; 1995, No. 1179, § 2; 2003, No. 1020, § 9.

Publisher's Notes. The same language from Acts 1991, No. 368, § 3, codi-

fied as § 9-14-503(d) and (e), is also codified as § 23-79-144.

Acts 1995, No. 1179 § 2, is also codified, in part, as § 23-79-144(a).

9-14-504. Communication with custodial parent or assignee.

(a) Without regard to the fact that coverage may be provided through a policy benefiting the noncustodial parent of a child or children, any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation operating in this state shall:

(1) Receive claims for payment;

(2) Respond to requests concerning information necessary to determine coverage status, claims status, health policy plan, or benefits for minor children for whom services are provided under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., regardless of the identity of the policyholder if the policy covers the child or to obtain benefits through coverage for minor children; and

(3) Communicate with:

(A) The custodial parent or parents or the noncustodial parent or parents of the minor child or children;

(B) An assignee; or

(C) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(b) Any insurer, health maintenance organization, self-funded group, multiple-employer welfare arrangement, or hospital or medical services corporation operating in this state shall permit the custodial parent or the provider, with approval of the custodial parent, to submit claims for covered services without approval of the noncustodial parent and shall make payment on such claims directly to the custodial parent, the provider, or the office.

History. Acts 1991, No. 368, § 3; 1995, No. 1179, § 3; 2005, No. 506, § 1; 2009, No. 551, § 5.

9-14-505. No direct offset to child support.

(a) Healthcare coverage premiums shall not be deemed or used as a direct offset to the child support award.

(b) However, premiums for health care for a minor child can be considered in determining net take-home pay of the noncustodial parent when setting the current child support award.

History. Acts 1991, No. 368, § 6.

9-14-506. Effective date of income withholding order — Applicability.

(a)(1) An order of income withholding for healthcare coverage shall take effect immediately upon completion of enrollment requirements or, in cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as required in § 9-14-516.

(2) Enrollment requirements shall be completed at the earliest enrollment period or, in cases being enforced under Title IV-D, 42 U.S.C. § 651 et seq., by the office, as required in § 9-14-516.

(3) Enrollment information shall be provided by the custodial parent, noncustodial parent, or the office as available.

(b) Income withholding for healthcare coverage shall apply to current and subsequent periods of employment once activated.

History. Acts 1991, No. 368, §§ 4, 7; 2003, No. 1020, § 10.

9-14-507. Priority of income withholding claims.

An order of income withholding for healthcare coverage shall have priority over all other legal processes under state law against money, income, or periodic earnings of the noncustodial parent except an order of income withholding for child support.

History. Acts 1991, No. 368, § 5.

9-14-508. Persons subject to income withholding — Ground for contest.

(a) Any person under a court order to provide and maintain healthcare coverage as of March 6, 1991, shall be subject to income withholding for healthcare coverage provisions of this subchapter.

(b) An order of income withholding for healthcare coverage shall become effective upon the completion of the notice requirement set forth in § 9-14-509.

(c)(1) The fact that the custodial parent provides supplemental medical insurance coverage or that the minor child or children are otherwise eligible for Medicaid assistance shall not be a ground to contest an order of income withholding for healthcare coverage.

(2) The only ground to contest an order of income withholding for healthcare coverage shall be mistake of fact.

(d) The noncustodial parent shall not eliminate healthcare coverage for the minor child or children without receiving evidence in writing that the court or administrative order providing for the healthcare coverage is no longer in effect.

(e) Whenever the court orders the noncustodial parent to provide healthcare coverage and the noncustodial parent fails or refuses to comply or eliminates healthcare coverage in violation of subsection (d)

of this section, that fact shall be disclosed to the court and may be considered a ground for civil or criminal contempt of court.

(f) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

History. Acts 1991, No. 368, § 8; 1995, No. 1179, § 4; 2003, No. 1020, § 11.

9-14-509. Notice to noncustodial parent.

(a) Prior to notification to the employer, the noncustodial parent shall be sent a notice by any form of mail addressed to the parent at his or her last known address as contained in the records of the court clerk.

(b) The information contained in the notice shall include:

(1) That the parent has been directed to provide and maintain healthcare coverage for the benefit of a minor child;

(2) The name and date of birth of the minor child or children;

(3) That the income withholding for healthcare coverage applies to current and subsequent periods of employment;

(4) The procedure available to contest the withholding on the ground that the withholding is not proper because of mistake of fact;

(5) That failure to contest the withholding within fifteen (15) days of the mail date of the notice will result in the payor's being notified to begin the enrollment requirements and withholding;

(6) That, if the noncustodial parent contests the withholding, he or she will be afforded an opportunity to present his or her case to the court or its representative in that jurisdiction within thirty (30) days of receipt of the notice of contest; and

(7) That state law prohibits employers from retaliating against a noncustodial parent under an income withholding order for healthcare coverage and that the court or its representative should be contacted if the noncustodial parent has been retaliated against by his or her employer as a result of the income withholding for healthcare coverage.

(c) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

History. Acts 1991, No. 368, § 9; 2003, No. 1020, § 12.

9-14-510. Determination of contest.

(a) Should the noncustodial parent contest the withholding because of mistake of fact, then, after providing the noncustodial parent an opportunity to present his or her case, the court or its representative shall determine whether the withholding shall occur and shall notify

the noncustodial parent of the determination and, if appropriate, the time period in which withholding will commence.

(b) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

History. Acts 1991, No. 368, § 10;
2003, No. 1020, § 13.

9-14-511. Notice to employer.

(a) Notice shall be sent to the employer or payor of the parent for whom income withholding for healthcare coverage has been ordered.

(b) The notice may be served on the employer or payor as if it were a summons pursuant to Rule 4 of the Arkansas Rules of Civil Procedure or may be sent to the employer by any form of mail requiring a signed receipt.

(c) The notice shall contain the following information:

(1) The parent's name and Social Security number;

(2) That the parent has been required to provide and maintain healthcare coverage for a dependent minor child;

(3) The name, date of birth, and Social Security number for each child;

(4) That the employer should complete the enrollment requirements with the assistance of the custodial parent, noncustodial parent, employee, or the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration and begin withholding funds sufficient from the earnings due the parent to cover premiums for placing the minor child on the parent's healthcare coverage as provided by the employer and pay such funds so withheld to the insurer;

(5) That withholding is binding on the payor for current and subsequent periods of employment or until further notice by the court or its representative;

(6) That the payor must notify the court or its representative immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source or healthcare coverage and shall provide the noncustodial parent's last known address and the name and address of any new employer or new healthcare coverage provider, if known, or both;

(7) That the employer must implement healthcare coverage for the minor child immediately upon receipt of the notice without regard to any enrollment season restrictions; and

(8) That the employer must not remove a minor child from enrollment for coverage unless:

(A) The employer has received evidence in writing that the court or administrative order is no longer in effect;

(B) The child is or will be enrolled in comparable healthcare coverage by the noncustodial parent that will take effect not later than the effective date of the disenrollment; or

(C) The employer has eliminated family healthcare coverage for all of its employees.

(d) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the office, § 9-14-516 shall apply.

History. Acts 1991, No. 368, § 11;
1995, No. 1179, § 5; 2003, No. 1020, § 14.

9-14-512. Objection of employer.

(a) Upon receipt of an objection from a payor under an order of income withholding for healthcare coverage, the court or its representative shall expeditiously determine whether the payor shall be relieved under the order and shall so inform the payor within ten (10) days of receipt of the objection by a notice of its determination sent to the payor by regular mail.

(b) In cases being enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, § 9-14-516 shall apply.

History. Acts 1991, No. 368, § 12;
2003, No. 1020, § 15.

9-14-513. Employer bound by court order until further notice.

A payor who has been notified of an order of income withholding for healthcare coverage shall be bound by the order until further notice by the court or its representative.

History. Acts 1991, No. 368, § 13.

9-14-514. Notification of court by employer of termination.

A payor shall notify the court or its representative or, in cases enforced under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, immediately when the noncustodial parent terminates employment or takes other adverse action terminating the income source and shall provide the noncustodial parent's last known address and the name and address of any new employer, if known.

History. Acts 1991, No. 368, § 13;
2003, No. 1020, § 16.

9-14-515. Employer prohibited from taking action against parent for income withholding.

(a) A payor who is an employer is prohibited from discharging, refusing to employ, or taking other disciplinary action against a noncustodial parent under an income withholding order for healthcare coverage.

(b) Any employer violating this subchapter shall be subject to the contempt powers of the court issuing the order and may be fined up to fifty dollars (\$50.00) per day.

(c) The noncustodial parent shall have the burden to prove that income withholding for healthcare coverage was the sole reason for the employer's action.

History. Acts 1991, No. 368, § 14.

9-14-516. Enforcing medical support in Title IV-D cases.

(a) In all cases in which either parent is ordered to provide medical support and the court order is enforced by the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et seq., the office shall utilize the National Medical Support Notice in compliance with federal regulations 45 C.F.R. § 303.32 and 29 C.F.R. Part 2590 as they existed on March 27, 2001.

(b) Unless the court or administrative order stipulates alternative coverage, the office shall send the National Medical Support Notice to the employer or payor within two (2) business days of receiving employment information or matching with employer information contained in the National Directory of New Hires.

(c) Immediately upon receipt of the National Medical Support Notice, the employer or payor shall deduct from wages or other income an amount sufficient to cover the cost of the healthcare premiums and shall forward that amount to the healthcare plan administrator.

(d)(1) The Consumer Credit Protection Act, 15 U.S.C. §§ 1671 — 1677, limits shall apply to the combined total withheld for both child support and medical coverage.

(2) Income withholding for child support shall take priority over the deduction for healthcare premiums.

(e) The employer or payor shall transmit the National Medical Support Notice to the healthcare plan administrator no later than twenty (20) business days after the date of the notice.

(f)(1) The healthcare plan administrator shall complete the enrollment requirements for the child and notify the parents and the child, if the child resides at an address other than the address of the custodial parent, that coverage is or will become available.

(2) The healthcare plan administrator shall also furnish the custodial parent, within forty (40) business days after the posting date of the National Medical Support Notice, the following:

(A) A description of the coverage;

(B) The effective date of the coverage; and

(C) Any forms or documents necessary to effectuate the coverage.

(g) The office, in consultation with the custodial parent, shall promptly select from available plan options when the plan administrator reports that there is more than one (1) option available under the plan.

(h)(1)(A) The obligor may contest the income withholding for health-care premiums based on a mistake of fact by objecting, within twenty (20) days after receipt of the notice, to the court or its representative.

(B) Notice of the objection shall be provided to the office.

(2) In order for the child to be enrolled in the health plan while the matter is being reviewed, the employer shall:

(A) Implement withholding immediately; and

(B) Forward the National Medical Support Notice to the health plan administrator.

(i) The employer shall notify the office promptly when the employment of the obligor is terminated and provide the office:

(1) The obligor's last known address; and

(2) The name and address of the obligor's employer, if known.

(j) The office shall notify the employer when there is no longer a current order for medical support in effect for which the Title IV-D agency is responsible.

History. Acts 2003, No. 1020, § 17.

Publisher's Notes. The National Medical Support Notice is a standard form the federal government has designed for the use of states in child support cases.

U.S. Code. Part 2590 of Title 29 of the Code of Federal Regulations, referred to in this section, is codified as 29 C.F.R. § 2590.606-1 et seq.

SUBCHAPTERS 6-7

[Reserved.]

SUBCHAPTER 8 — CENTRALIZED CLEARINGHOUSE

SECTION.

9-14-801. Definitions and capabilities.

9-14-802. Authority.

9-14-803. Data.

9-14-804. Payments — Effect.

9-14-805. Permanent transfer.

SECTION.

9-14-806. Electronic funds transfer and electronic data information election.

9-14-807. Official payment record.

A.C.R.C. Notes. Pursuant to § 1-2-207, the repeal of former § 9-14-806 by Acts 1995, No. 1344 superseded its amendment by Acts 1995, No. 1184.

Publisher's Notes. Former subchapter 8, concerning a centralized clearinghouse for child support payments, was repealed by implication by Acts 1995, No. 1344. The former subchapter was derived from:

9-14-801. Acts 1989, No. 686, § 1.

9-14-802. Acts 1989, No. 686, § 2; 1993, No. 1242, § 15.

9-14-803. Acts 1989, No. 686, § 3.

9-14-804. Acts 1989, No. 686, § 4.

9-14-805. Acts 1989, No. 686, § 5.

9-14-806. Acts 1989, No. 686, § 6; 1995, No. 1184, § 17.

Effective Dates. Acts 1995, No. 1344,

§ 11: Apr. 17, 1995. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected, enforced, and distributed in the most expedient manner for all children of this state; that smooth transition from current requirements to those of this act

require that the provisions become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from after its passage and approval.”

Acts 2019, No. 904, § 14: Jan. 1, 2020.

9-14-801. Definitions and capabilities.

As used in this subchapter:

(1)(A) “Clearinghouse” means an automated child support payment processing system operating under the auspices of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, capable of providing electronic funds transfer and electronic data interchange transactions for all Title IV-D child support cases on a statewide basis.

(B) The clearinghouse shall be capable of pro rata distribution of child support payments on multiple cases involving the same non-custodial parent, and different custodial parents, through income withholding.

(C) The clearinghouse shall be capable of processing automated assignments of child support payments in accordance with state laws and rules and federal laws and regulations.

(D) The clearinghouse shall be capable of performing electronic funds transfer and electronic data interchange transactions;

(2) “EFT/EDI” means electronic funds transfer and electronic data interchange; and

(3) “Title IV-D” means Title IV-D of the Social Security Act, as amended.

History. Acts 1995, No. 1344, § 1; 2019, No. 315, § 716; 2019, No. 904, § 9.

Amendments. The 2019 amendment by No. 315 inserted “laws and rules” in (2)(C) (now (1)(C)).

The 2019 amendment by No. 904 deleted former (1) and (4) and redesignated the remaining subdivisions accordingly.

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

9-14-802. Authority.

The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to implement a clearinghouse system with electronic funds transfer and electronic data interchange transaction capabilities for the collection and distribution of child support payments in all cases brought pursuant to Title IV-D of the Social Security Act and cases assigned to the clearinghouse as provided in this subchapter.

History. Acts 1995, No. 1344, § 2.

Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

U.S. Code. Title IV-D of the Social

9-14-803. Data.

(a) The clerk of the court shall provide to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration information on all child support payments paid through the registry of the court concerning the categories of cases listed in subsection (b) of this section, including, but not limited to, the name, address, Social Security number, and employer of the plaintiff and defendant when available to the clerk through the court records.

(b)(1) All child support payments owed in the below-listed cases shall be paid through the clearinghouse.

(2) The clerk of the court shall provide the payment records of the below-listed cases to the office within five (5) working days following receipt of written notice by the office of one (1) of the listed contingencies:

(A) When there is a current assignment of rights pursuant to § 9-14-109, § 20-77-109, or § 20-77-307 to the office by the custodial parent, and in cases where the custodial parents execute an application for Title IV-D services;

(B) In cases in which there are arrearages owed to the custodial parent and arrearages owed to the state pursuant to an assignment as set out in § 9-14-109, § 20-77-109, or § 20-77-307, and the clerk of the court is unable to split the child support payment between the custodial parent and the state; and

(C) In all Title IV-D cases, or in multiple cases involving the Title IV-D office, in which income withholding is ordered and the obligated parent has more than one (1) child support case and the clerk of the court is unable to split the child support payment between the obligated parent's cases on a pro rata basis as required by state laws and rules and federal laws and regulations.

(c) Any child support payment records provided by the clerk of the court pursuant to this section to the office shall be attested to and certified by the clerk of the court in writing as the true and accurate payment record of the noncustodial parent.

History. Acts 1995, No. 1344, § 3; 1997, No. 1296, § 35; 2019, No. 315, § 717; 2019, No. 904, § 10.

Amendments. The 2019 amendment by No. 315 inserted "laws and rules" in (b)(2)(D) (now (b)(2)(C)).

The 2019 amendment by No. 904 deleted former (b)(2)(B) and redesignated

the remaining subdivisions accordingly; and deleted former (c) and redesignated (d) as present (c).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

9-14-804. Payments — Effect.

(a)(1) All child support payments made on cases brought pursuant to Title IV-D shall be paid through the clearinghouse to be operated under the auspices of the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(2) Alimony payments may be paid through the clearinghouse if an order to pay child support is included in the order of alimony.

(3) Support payments under § 9-14-803(b) and any other payments required by court order to be made through the registry of the court or through the clerk of the court shall be made to the clearinghouse.

(b)(1) All orders directing payments through the clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year, or nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor, the child support obligation is extinguished, and any arrears are completely satisfied.

(2) If the court sets an annual fee or a pro rata amount representing the portion of the fee due for the remainder of the calendar year, it shall be collected from the noncustodial parent or obligated spouse at the time of the first payment, and a thirty-six-dollar fee shall be collected in January of each year thereafter until no children remain minor and the support obligation is extinguished.

(3) The office shall have all rights and responsibilities of the clerk of the court, including, but not limited to, those rights and responsibilities set out in §§ 9-10-109 and 9-12-312.

(c) In all cases transferred to the clearinghouse by the clerk of the court, the fee paid by the noncustodial parent pursuant to §§ 9-10-109 and 9-12-312 paid subsequent to the transfer of the case shall be paid to the clearinghouse.

History. Acts 1995, No. 1344, § 4; 1997, No. 1296, § 36; 1999, No. 1514, § 20; 2019, No. 904, § 11.

A.C.R.C. Notes. As enacted by Acts 1995, No. 1344, subdivision (a)(1) began: “Effective October 1, 1995,”

As enacted by Acts 1995, No. 1344, subdivision (a)(1)(C) provided that the payments shall, “effective October 1, 1995,” be made to the clearinghouse.

As enacted by Acts 1995, No. 1344, subdivision (c)(1) began: “Effective January 1, 1996.”

Amendments. The 2019 amendment deleted the (a)(1)(A) designation; redesignated (a)(1)(B) and (C) as (a)(2) and (3); and deleted former (a)(2).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

9-14-805. Permanent transfer.

(a)(1) A Title IV-D child support, paternity, or Medicaid-only case shall remain within the clearinghouse for payment, collection, and distribution purposes even though a custodial parent may elect to close the case with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration in regard to establishment and enforcement services.

(2) The cases shall be referred to as non-Title IV-D clearinghouse cases.

(b) In the event a child support case begins paying through the clearinghouse, all payments shall continue to be paid through the clearinghouse for the life of the case.

(c)(1) Effective October 1, 1998, by operation of law, all cases that are enforced by the state in which the support order was initially issued on or after January 1, 1994, and in which income of the noncustodial parent is subject to withholding, shall be paid through the clearinghouse.

(2) All child support cases once paid through the clearinghouse, Title IV-D and non-Title IV-D clearinghouse cases, shall continue to be paid through the clearinghouse in accordance with this section.

(3) All other child support payments currently being paid through the registry of the circuit court shall continue to be paid through the registry:

(A) Until October 1, 1999, at which time all child support payments made through income withholding shall, by operation of law, be redirected and paid through the clearinghouse;

(B) Until an assignment of child support to the office is made in a case; or

(C) Until such time as the office and the clerk of the court agree that child support payments may be redirected to and paid through the clearinghouse prior to September 30, 1999, but any such agreement shall not be effective until October 1, 1998.

(4) For all child support cases with income withholding that are redirected to and paid through the clearinghouse in accordance with subdivisions (c)(1) and (2) of this section, the clerk of the court shall enter into the Arkansas Child Support Data Tracking System or shall supply by first class mail on an approved form any and all information required by the office sufficient to process child support payments.

History. Acts 1995, No. 1344, § 5; Security Act, referred to in this section, is 1997, No. 1296, § 37. codified as 42 U.S.C. § 651 et seq.

U.S. Code. Title IV-D of the Social

9-14-806. Electronic funds transfer and electronic data information election.

(a) Employers may remit income withholding for child support by electronic funds transfer and electronic data interchange transaction.

(b) The Title IV-D agency shall notify the employer when a case is assigned or transferred to the clearinghouse, at which time the employer shall begin or continue income withholding for child support and may remit such payments to the clearinghouse by electronic funds transfer and electronic data interchange transactions.

History. Acts 1995, No. 1344, § 6; **Amendments.** The 2019 amendment 2019, No. 904, § 12. deleted "Arkansas Child Support Track-

ing System” from the end of the section heading; and deleted former (b) and (d) and redesignated former (c) as (b).

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

9-14-807. Official payment record.

- (a) In all cases mentioned in this subchapter wherein the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is charged with collection and distribution of child support, the payment records of the office shall constitute an official public record subject to the self-authentication provision of the Arkansas Rules of Evidence.
- (b) The child support payment record issued by the office and certified by an affidavit duly subscribed and sworn to before a notary public may be introduced in evidence in child support actions without calling an agent or employee of the office as a witness.
- (c)(1)(A) The office shall furnish the child support payment record, duly certified as set out in subsection (b) of this section, to a noncustodial parent or custodial parent in his or her child support case or cases, or to the attorney of record of the noncustodial or custodial parent, or to whomever the noncustodial parent, custodial parent, or his or her attorney of record directs, upon written request.
- (B) The request shall state the name of the noncustodial parent and custodial parent, the court docket number, and the Title IV-D numbers, when available.
- (2) The office may also furnish a certified child support payment record, as set out in subsection (b) of this section, to officers of the court and judges and for the purpose of facilitating the satisfaction of a judgment for child support, to abstractors and attorneys.

History. Acts 1995, No. 1344, § 7; 2003, No. 1020, § 18; 2003, No. 1177, § 1; 2019, No. 904, § 13.

Amendments. The 2019 amendment deleted (b)(2).

A.C.R.C. Notes. As enacted by Acts 1995, No. 1344, § 7, subsection (a) began: “Effective October 1, 1995,”

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Child Support Pay-

ment Records, 26 U. Ark. Little Rock L. Rev. 414.

CHAPTER 15

DOMESTIC ABUSE ACT

- SUBCHAPTER.
1. GENERAL PROVISIONS.
 2. JUDICIAL PROCEEDINGS.
 3. ORDERS OF PROTECTION FROM OTHER JURISDICTIONS.
 4. SPOUSAL ABUSE SAFETY PLAN ACT.

A.C.R.C. Notes. Former chapter 15, concerning domestic abuse, was held unconstitutional in *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990) and is deemed to be superseded by Acts 1991, No. 266. The former sections were derived from the following sources:

- 9-15-101. Acts 1989, No. 636, § 1.
- 9-15-102. Acts 1989, No. 636, § 2.
- 9-15-103. Acts 1989, No. 636, § 3.
- 9-15-104. Acts 1989, No. 636, §§ 4, 5.
- 9-15-105. Acts 1989, No. 636, § 6.
- 9-15-201. Acts 1989, No. 636, § 4.
- 9-15-202. Acts 1989, No. 636, § 4.
- 9-15-203. Acts 1989, No. 636, § 4.
- 9-15-204. Acts 1989, No. 636, § 4.
- 9-15-205. Acts 1989, No. 636, § 4.
- 9-15-206. Acts 1989, No. 636, § 4.
- 9-15-207. Acts 1989, No. 636, § 4.
- 9-15-208. Acts 1989, No. 636, § 4.
- 9-15-209. Acts 1989, No. 636, § 4.
- 9-15-210. Acts 1989, No. 636, § 5.
- 9-15-211. Acts 1989, No. 636, § 5.

Cross References. Use of deadly force

as defense against domestic abuse, § 5-2-607.

Effective Dates. Acts 1991, No. 266, § 17: Feb. 28, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that since the recent court decision in *Bates v. Bates*, this state has lacked adequate remedies for dealing with domestic violence and abuse; that the problem of domestic violence and abuse in our society is so complex that proper judicial remedies for victims and potential victims transcend the traditional jurisdictions of circuit and municipal court; that every potential remedy should be made available to members of households who have been subjected to abuse or are likely to be subjected to abuse such as to provide for the issuance of a protective order. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force upon its passage and approval."

RESEARCH REFERENCES

ALR. Standard for determination of reasonableness of criminal defendant's belief, for purposes of self-defense claim, that physical force is necessary — modern cases. 73 A.L.R.4th 993.

Ineffective assistance of counsel, battered spouse syndrome as a defense to homicide or other criminal offense. 11 A.L.R.5th 871.

Admissibility of evidence of prior physical acts of spousal abuse committed by defendant accused of murdering spouse or former spouse. 24 A.L.R.5th 465.

Construction and effect of statutes mandating consideration of, or creating presumptions regarding, domestic violence in awarding custody of children. 51 A.L.R.5th 241.

Admissibility of expert or opinion evidence of battered-woman syndrome on issue of self-defense. 57 A.L.R.5th 315; 58 A.L.R.5th 749.

Duty to retreat where assailant and assailed share same living quarters. 67 A.L.R.5th 637.

Am. Jur. 24 Am. Jur. 2d, Divorce & S., §§ 39-42.

25 Am. Jur. 2d, Dom. Abuse, § 1 et seq.

Ark. L. Rev. Killenbeck, Nothing That We Can Do? Or, Much Ado About Nothing? Some Thoughts on *Bates v. Bates*, Equity, and Domestic Abuse in Arkansas, 43 Ark. L. Rev. 732.

Killenbeck, And Then They Did ? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

C.J.S. 28 C.J.S., Dom Abuse, § 1 et seq.

U. Ark. Little Rock L.J. Survey, Family Law, 13 U. Ark. Little Rock L.J. 369.

Notes, Constitutional Law — The Domestic Abuse Act of 1989 — An Impermissible Expansion of Chancery Jurisdiction (*Bates v. Bates*), 13 U. Ark. Little Rock L.J. 537.

CASE NOTES

ANALYSIS

Constitutionality.
Purpose.
Mootness.

Constitutionality.

The 1989 version of this chapter created a new cause of action and unconstitutionally placed jurisdiction of the new cause of action in the chancery court. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Because the remedy provided at law was adequate, one of the conditions necessary for equity to act to protect personal and property rights had not been met, and the chancellor correctly held that the 1989 Domestic Abuse Act impermissibly enlarged chancery court jurisdiction. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Acts 1989, No. 636 did not contain a severability clause, and when an act does not contain a severability clause, and the various parts of the act are so interdependent that it cannot be presumed the Gen-

eral Assembly would have enacted one section without the other, the whole act must fail. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Purpose.

The quintessence of the cause of action provided by the 1989 version of this chapter was preventing a person from committing acts of domestic abuse. *Bates v. Bates*, 303 Ark. 89, 793 S.W.2d 788 (1990).

Mootness.

Husband's appeal from an order of protection that prohibited him from contacting his wife and limited his contact with his daughter was not moot even though the protective order had expired where there may have been collateral consequences that remained under the Domestic Abuse Act, § 9-15-101 et seq. (adding the collateral-consequences exception to the mootness doctrine noted in *Gee v. Harris*, 94 Ark. App. 32, 223 S.W.3d 88 (2006), without the necessity of overruling *Gee*). *Poland v. Poland*, 2017 Ark. App. 178, 518 S.W.3d 98 (2017).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.
9-15-101. Purpose.
9-15-102. Title.

SECTION.
9-15-103. Definitions.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

9-15-101. Purpose.

The purpose of this chapter is to provide an adequate mechanism whereby the State of Arkansas can protect the general health, welfare, and safety of its citizens by intervening when abuse of a member of a household by another member of a household occurs or is threatened to occur, thus preventing further violence. The General Assembly has assessed domestic abuse in Arkansas and believes that the relief

contemplated under this chapter is injunctive and therefore equitable in nature. The General Assembly hereby finds that this chapter is necessary to secure important governmental interests in the protection of victims of abuse and the prevention of further abuse through the removal of offenders from the household and other injunctive relief for which there is no adequate remedy in current law. The General Assembly hereby finds that this chapter shall meet a compelling societal need and is necessary to correct the acute and pervasive problem of violence and abuse within households in this state. The equitable nature of this remedy requires the legislature to place proceedings contemplated by this chapter under the jurisdiction of the circuit courts.

History. Acts 1991, No. 266, § 1.

CASE NOTES

ANALYSIS

Applicability.

Issuance.

Jurisdiction.

Applicability.

Circuit court did not misapply the state's Domestic Abuse Act by dismissing wife's petition for an order of protection because a mutual restraining order had been entered in the parties' divorce case. *Davis v. Davis*, 360 Ark. 233, 200 S.W.3d 886 (2005).

Pursuant to the Arkansas Domestic Abuse Act, a court erred in granting a mother's petition for an order of protection against appellant where the only allegations that were proven were that appellant had continued to see the mother's 16-year-old daughter after the mother prohibited contact between them and that appellant had purchased the morning-after pill for the daughter; the mere fact that the parents did not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm. *Claver v. Wilbur*, 102 Ark. App. 53, 280 S.W.3d 570 (2008).

Arkansas Domestic Abuse Act's purpose does not in any way indicate that it should be utilized only when there are no other adequate remedies or that the parties must reside together. Therefore, a case where the parties had dated for eight

months, but never lived together, came within the purview of the Act, and the fact that there were other remedies available did not preclude seeking a protective order under the Act. *Steele v. Lyon*, 2015 Ark. App. 251, 460 S.W.3d 827 (2015).

Issuance.

Decision to enter a two-year order of protection under the Arkansas Domestic Abuse Act was not clearly erroneous based on acts causing the fear of imminent physical harm, bodily injury, or assault. A former girlfriend sent 46 text messages, struck her former boyfriend, and followed him around during an event. *Steele v. Lyon*, 2015 Ark. App. 251, 460 S.W.3d 827 (2015).

Jurisdiction.

Argument that the statute relating to modification of orders of protection, § 9-15-209, had to be strictly complied with in order for the trial court to have jurisdiction was rejected because the trial court clearly had jurisdiction to enter the order pursuant to this section. The case did not present a question of jurisdiction where the modification of the order was challenged. *Calaway v. Crotty*, 2013 Ark. App. 637 (2013).

Cited: *Lowry v. State*, 90 Ark. App. 333, 205 S.W.3d 830 (2005); *Calaway v. Crotty*, 2014 Ark. App. 636, 448 S.W.3d 723 (2014); *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, 594 S.W.3d 84 (2020).

9-15-102. Title.

This chapter shall be known and may be cited as the “Domestic Abuse Act of 1991”.

History. Acts 1991, No. 266, § 11.

9-15-103. Definitions.

As used in this chapter:

(1) “Commercial mobile radio service” means commercial mobile service as defined in 47 U.S.C. § 332;

(2) “County where the petitioner resides” means the county in which the petitioner physically resides at the time the petition is filed and may include a county where the petitioner is located for a short-term stay in a domestic violence shelter;

(3)(A) “Dating relationship” means a romantic or intimate social relationship between two (2) individuals that shall be determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) “Dating relationship” does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context;

(4) “Domestic abuse” means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state;

(5) “Family or household members” means spouses, former spouses, parents and children, persons related by blood within the fourth degree of consanguinity, in-laws, any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who are presently or in the past have been in a dating relationship together;

(6) “In-laws” means persons related by marriage within the second degree of consanguinity; and

(7) “Wireless telephone service provider” means a commercial mobile radio service provider or reseller.

History. Acts 1991, No. 266, § 2; 1999, No. 1551, § 1; 2001, No. 1678, § 1; 2005, No. 1676, § 1; 2005, No. 1875, § 1; 2009, No. 698, § 1; 2015, No. 701, §§ 1, 2; 2017, No. 577, § 1.

A.C.R.C. Notes. Acts 2001, No. 1678,

§ 1, did not accurately engross the amendments to this section. Certain language was inadvertently deleted during the amendment process and added back by the Arkansas Code Revision Commission pursuant to a review.

Amendments. The 2015 amendment added the definition for “In-laws”; and inserted “in-laws” in (4) [now (5)].

The 2017 amendment added the definitions for “Commercial mobile radio service” and “Wireless telephone service provider”.

Cross References. First degree as-

sault on family or household member, § 5-26-307.

Petition form for orders of protection, § 9-15-203.

Use of deadly force as defense against domestic abuse, § 5-2-607.

Warrantless arrest for domestic abuse, § 16-81-113.

CASE NOTES

ANALYSIS

Domestic Abuse.

Family or Household Members.

Imminent.

Domestic Abuse.

Order of protection entered against defendant was reversed as the evidence was insufficient to find that defendant had inflicted physical harm, bodily injury, assault, or fear of imminent physical harm, bodily injury, or assault, as required by this section. *Newton v. Tidd*, 94 Ark. App. 368, 231 S.W.3d 84 (2006).

Trial court could have reasonably found that appellant committed domestic abuse by inflicting fear of imminent physical harm, bodily injury, or assault where appellee testified that he grabbed her, screamed obscenities in her face, and burst a beer bottle behind her at a party, causing her to fear for her safety. *Pablo v. Crowder*, 95 Ark. App. 268, 236 S.W.3d 559 (2006).

Pursuant to the Domestic Abuse Act, a court erred in granting a mother’s petition for an order of protection against appellant where the only allegations that were proven were that appellant had continued to see the mother’s 16-year-old daughter after the mother prohibited contact between them and that appellant had purchased the morning-after pill for the daughter; the mere fact that the parents did not like appellant was not a proper ground upon which to issue an order of protection in the absence of evidence of actual physical harm or the fear of imminent physical harm. *Claver v. Wilbur*, 102 Ark. App. 53, 280 S.W.3d 570 (2008).

Circuit court’s finding of no domestic abuse was not clearly erroneous where (1) although the husband admitted that the parties argued, that he pulled the phone out of the wall, and that he closed the

living room blinds, the husband testified that he neither threatened the wife, hit her, or hit or threatened his son; and (2) the husband also testified that he did not intend to frighten the wife. *Oates v. Oates*, 2010 Ark. App. 345, 377 S.W.3d 394 (2010).

Sufficient evidence supported a finding that a mother committed domestic abuse; the parties were involved in an ongoing dispute, and even though the father did not testify to being afraid, the father had called the police after hearing gun shots on his porch and refused to open the door until the police arrived. *Davenport v. Burnley*, 2010 Ark. App. 385 (2010).

Any parent, after learning that his or her child was in a car with a certain driver during an accident, might fear the child could be harmed or suffer injury if the child were to ride in the car with that driver again, but a car accident in and of itself does not rise to the level of domestic abuse; although the father claimed he feared for the safety of the child because the mother had driven under the influence of drugs while the child and other children were in the car, the father failed to support those allegations, and the circuit court clearly erred in finding that there was sufficient evidence to support the entry of a final order of protection against the mother. *Bohannon v. Robinson*, 2014 Ark. 458, 447 S.W.3d 585 (2014).

Circuit court’s decision to enter a final order of protection was not clearly erroneous where it credited the victim’s testimony that appellant pushed her down, shoved her against a wall, threatened to beat and kill her and her boyfriend, sent her text messages stating the same threats, and had violated an ex parte order of protection by sitting in a vehicle within 10 to 15 feet of her apartment. *Wornkey v. Deane*, 2017 Ark. App. 176, 517 S.W.3d 438 (2017).

Evidence was sufficient to sustain the protective order where there was testimony that the husband hit the wife's legs and caused bruising, he always had his gun near him, he waved the gun at the wife, he threatened the daughter, and the daughter was present during many of the confrontations. *Poland v. Poland*, 2017 Ark. App. 178, 518 S.W.3d 98 (2017).

Five-year order of protection against a father was upheld because the district court judge's finding of domestic abuse was not clearly erroneous or clearly against the preponderance of the evidence given the statutory definition of domestic abuse; although the father contended that the incident did not constitute excessive corporeal punishment, the four-year-old child incurred a bodily injury when the father struck him up and down with a leather belt, leaving bruises, and the child's therapist testified how traumatic the experience was for him, which was why the child said he wanted to kill himself and needed inpatient mental-health treatment. *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

In granting an order of protection under § 9-15-205, it was within the purview of the circuit court to assess the witnesses' credibility, and the circuit court found petitioner's testimony that she was fearful of her husband to be credible. Thus, there was sufficient evidence to find "infliction of fear of imminent physical harm, bodily injury, or assault between family or household members" under the definition of "domestic abuse" in this section. *Armstrong v. Armstrong*, 2019 Ark. App. 188, 574 S.W.3d 720 (2019).

Circuit court erred in extending the final order of protection to the minor child where there were no allegations of physical harm, bodily injury, assault, or the infliction of fear directed to the child, and the child's exposure to such incidents against the mother, although concerning, did not constitute domestic abuse under the definition in this section. *Kankey v. Quimby*, 2020 Ark. App. 471 (2020).

Family or Household Members.

Domestic Abuse Act's purpose does not in any way indicate that it should be utilized only when there are no other adequate remedies or that the parties must reside together. Therefore, a case where the parties had dated for eight months, but never lived together, came within the purview of the Act, and the fact that there were other remedies available did not preclude seeking a protective order under the Act. *Steele v. Lyon*, 2015 Ark. App. 251, 460 S.W.3d 827 (2015).

Imminent.

"Imminent" means "likely to occur at any moment" or "impending" at the time of the alleged abuse, not at the time of filing the petition for a protective order; therefore, an order of protection was properly granted where the girlfriend was in fear of imminent harm based on threatening text messages sent by her boyfriend four months prior to the filing of the order of protection. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

Cited: *Oates v. Oates*, 2010 Ark. App. 346 (2010); *Calaway v. Crotty*, 2014 Ark. App. 636, 448 S.W.3d 723 (2014); *Shepherd v. Tate*, 2019 Ark. App. 143 (2019).

SUBCHAPTER 2 — JUDICIAL PROCEEDINGS

SECTION.

- 9-15-201. Petition — Requirements generally.
- 9-15-202. Filing fees.
- 9-15-203. Petition — Form.
- 9-15-204. Hearing — Service.
- 9-15-205. Relief generally — Duration.
- 9-15-206. Temporary order.
- 9-15-207. Order of protection — Enforcement — Penalties — Criminal jurisdiction.
- 9-15-208. Law enforcement assistance.

SECTION.

- 9-15-209. Modification of orders.
- 9-15-210. Contempt proceedings.
- 9-15-211. [Repealed.]
- 9-15-212. Effect of no contact order.
- 9-15-213. Police conduct and procedure.
- 9-15-214. Denial of relief prohibited.
- 9-15-215. Factors in determining custody and visitation.
- 9-15-216. Mutual orders of protection — Separate orders of protection.

SECTION.

9-15-217. Order of protection — Violations — Domestic violence surveillance program — Global positioning devices — Definition.

SECTION.

9-15-218. Commercial mobile radio service accounts — Transfer order.

Effective Dates. Acts 2009, No. 331, § 3: Mar. 10, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that domestic violence is on the rise and poses a danger to the public; that increasing the penalty for repeat offenders aids both law enforcement and the victims of domestic violence and that this act is immediately necessary because current enforcement and prosecution will be greatly aided by the new, more serious penalties for those persons who repeatedly violate orders of protection. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2013, No. 282, § 17: Mar. 6, 2013. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one-year period; that the effectiveness of this act as soon as possible is essential to the operation of the judiciary and the administration of justice; and that this act is immediately necessary because the delay in the effective date of this act could cause irreparable harm upon the proper administration of essential governmental programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey, Criminal Law, 12 U. Ark. Little Rock L.J. 617.

Survey — Family Law, 14 U. Ark. Little Rock L.J. 799.

9-15-201. Petition — Requirements generally.

(a) All petitions under this chapter shall be verified.

(b) The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served.

(c)(1) A petition for relief under this chapter may be filed in the circuit court.

(2) A petition for relief under this chapter may be filed in a pilot district court if the jurisdiction is established by the Supreme Court under Arkansas Constitution, Amendment 80, § 7, and if the cases are assigned to the pilot district court through the administrative plan under Supreme Court Administrative Order No. 14.

(d) A petition may be filed by:

(1) Any adult family or household member on behalf of himself or herself;

(2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;

(3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or

(4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

(e)(1) A petition for relief shall:

(A) Allege the existence of domestic abuse;

(B) Disclose the existence of any pending litigation between the parties; and

(C) Disclose any prior filings of a petition for an order of protection under this chapter.

(2) The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

(f) The petition may be filed regardless of whether there is any pending litigation between the parties.

(g) A person's right to file a petition, or obtain relief hereunder shall not be affected by his or her leaving the residence or household to avoid abuse.

History. Acts 1991, No. 266, §§ 3, 8; 2003, No. 1221, § 1; 2007, No. 314, § 1; 2009, No. 698, § 2.

CASE NOTES

ANALYSIS

Evidence.

Pending Litigation.

Statutory Requirements.

Evidence.

Although an ex-wife's petition for an order of protection properly alleged domestic abuse, pursuant to subdivision (e)(1)(A) of this section, there was insufficient evidence to support the trial court's grant of the order because the ex-husband's constant phone calls and harassing emails did not fall under the legislative definition of domestic abuse; there was no evidence the ex-husband's comment of "or else" was in fact some sort of threat of physical or bodily harm. *Paschal v. Paschal*, 2011 Ark. App. 515 (2011).

Evidence was insufficient to support the domestic-abuse finding and the grant of an order of protection; assuming the fa-

ther's testimony that the mother's live-in boyfriend had sexually abused the child was true, there was absolutely no evidence that the child's mother in any way caused the infliction of fear of imminent physical harm, bodily injury, or assault on the child. *Stahl v. Smith*, 2017 Ark. App. 603, 535 S.W.3d 279 (2017).

Pending Litigation.

Granting of the mother's petition for a temporary order of protection in the First Division was proper under subsection (f) of this section because the petition could have been filed regardless of whether there was any pending litigation between the parties. And, in granting the order of protection, the First Division made it clear that while it was stopping the father's visitation pursuant to the protective order, the protective order was subject to modification by the Second Division; far from usurping the Second Division's au-

thority, the First Division deferred to it. *Chiolak v. Chiolak*, 99 Ark. App. 277, 259 S.W.3d 466 (2007).

Statutory Requirements.

Resident plaintiff's petition for an order of protection was statutorily deficient where the attached handwritten state-

ment of facts was not made under oath as required by subdivision (e)(2) of this section. *Beason v. Parks*, 2015 Ark. App. 246, 459 S.W.3d 841 (2015).

Cited: *Dugas v. Kells*, 2013 Ark. App. 384 (2013).

9-15-202. Filing fees.

(a)(1) The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs.

(2) A claim or counterclaim for other relief, including without limitation divorce, annulment, separate maintenance, or paternity shall not be asserted in an action brought under this subchapter except to the extent permitted in this subchapter.

(b)(1) Established filing fees may be assessed against the respondent at the full hearing.

(2) Filing fees under this section shall be collected by the county official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in circuit court and shall be remitted on or before the tenth day of each month to the office of county treasurer for deposit to the county administration of justice fund.

(3) The county shall remit on or before the fifteenth day of each month all sums received in excess of the amounts necessary to fund the expenses enumerated in § 16-10-307(b) and (c) during the previous month from the uniform filing fees provided for in § 21-6-403, the uniform court costs provided for in § 16-10-305, and the fees provided for in this section to the Administration of Justice Funds Section of the Department of Finance and Administration for deposit into the State Administration of Justice Fund.

(c)(1) The abused in a domestic violence petition for relief for a protection order sought under this subchapter shall not bear the cost associated with its filing or the costs associated with the issuance or service of a warrant and witness subpoena.

(2) This subsection does not prohibit a judge from assessing costs against a petitioner if the allegations of abuse are determined after a hearing to be false.

(d)(1) An additional court cost of twenty-five dollars (\$25.00) shall be assessed and remitted to the Administration of Justice Funds Section by the court clerk for deposit as special revenues into the Domestic Violence Shelter Fund if a person is a convicted perpetrator of domestic abuse or is the respondent on a permanent order of protection entered by a court under this chapter.

(2) The court clerk shall disburse all court costs collected each month under subdivision (d)(1) of this section to the Administration of Justice Funds Section by the fifteenth working day of the following month.

History. Acts 1991, No. 266, § 9; 1995, No. 401, § 1; 2013, No. 282, § 2; 2017, No. 583, § 2.

Publisher’s Notes. Acts 1995, No. 401, § 1, is also codified in part as § 5-26-310(b).

Amendments. The 2017 amendment added (d).

CASE NOTES

Costs.
Court of appeals did not have jurisdiction pursuant to Ark. R. App. P. Civ. 2(a)(1) to hear the wife’s appeal as a final order had not been entered by the trial court when it conditionally granted the order of protection against the husband but made it contingent upon his paying costs with the wife being allowed to “assist” him, tantamount to shifting the costs to the wife in violation of this section because the statute specifically stated that the petitioner should not be required to bear those costs. *Dobbs v. Dobbs*, 99 Ark. App. 156, 258 S.W.3d 414 (2007).

9-15-203. Petition — Form.

- (a) The circuit clerk shall provide simplified forms and clerical assistance to help petitioners with the writing and filing of a petition under this chapter if the petitioner is not represented by counsel.
- (b) The petition form shall not require or suggest that a petitioner include his or her Social Security number or the Social Security number of the respondent in the petition.
- (c)(1)(A) A petitioner may omit his or her home address or business address from all documents filed with the court.
- (B) If a petitioner omits his or her home address, the petitioner shall provide the court with a mailing address.
- (2) If disclosure of a petitioner’s home address is necessary to determine jurisdiction or consider venue, the court may order the disclosure of the petitioner’s home address:
- (A) After receiving the petitioner’s consent;
- (B) Orally and in chambers, out of the presence of the respondent, and a sealed record to be made; or
- (C) After a hearing, if the court takes into consideration the safety of the petitioner and finds the disclosure in the interest of justice.
- (d) The petition may be in substantially the following form:

“Petition for Order of Protection

	Case No. _____
_____	Petitioner’s home address:
Petitioner	_____

Date of Birth	Petitioner’s work address:

vs.	
_____	Respondent’s home address:
Respondent	_____

Date of Birth,
if known

Respondent's work address:

____ I am the petitioner and ____ at least 18 years of age ____ under 18 but emancipated.

____ I am filing on behalf of myself.

____ I am filing on behalf of a family or household member who is:
____ a minor(s): (list) _____

____ an adjudicated incompetent person: (list) _____

____ The respondent is ____ at least 18 years of age ____ under 18 but emancipated.

____ I am an employee or volunteer of a domestic violence shelter or program, and I am filing on behalf of a minor.

The respondent and petitioner (or victim if filing on behalf of a minor or incompetent person): (check all that apply)

____ Are spouses;

____ Are parent and child;

____ Are former spouses;

____ Have or have had a child in common; or

____ Are related by blood;

____ Currently reside together or cohabit;

____ Formerly resided together or cohabited;

____ Are presently or in the past have been in a dating relationship.

If order of protection of children is requested:

Children	Date of Birth	Address	Relationship to Parties
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The respondent has committed domestic abuse to the petitioner or victim by the following acts: (describe)

I am afraid of the respondent and: (describe)

_____ (1) There is an immediate and present danger of domestic abuse to me; or

_____ (2) The respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse to me. The reasons are as follows: (describe)

_____ Petitioner requests that the court issue an ex parte order of protection with the following provisions: (check all that apply)

_____ Excluding the respondent from a shared residence or from the residence of the petitioner or victim. Address of residence:

_____ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of residence:

_____ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of:

Place of business: _____

Employment: _____

School: _____

Other (identify): _____

Prohibiting the respondent, directly or through an agent, from contacting the petitioner or victim, except under the following conditions:

_____ Awarding temporary custody of minor children as follows:

Child's Name and Name of Person to Receive Custody

_____ Requiring the respondent to pay child support in the amount of \$_____ per child per month

_____ Requiring the respondent to pay spousal support in the amount of \$_____ per month

_____ Excluding the petitioner's address from notice to the respondent

_____ It is further requested that upon hearing, the court issue a full order of protection with the following provisions: (check all that apply)

____ Excluding the respondent from the shared residence or from the residence of the petitioner or victim. Address of the residence:_____

____ Excluding the respondent from the place of business, employment, school, or other location of the petitioner or victim. Address of:

Place of business: _____

Employment: _____

School: _____

Other (identify): _____

____ Awarding temporary custody of minor children as follows:
Child's Name and Name of Person to Receive Custody

____ Requiring the respondent to pay child support in the amount of \$____ per child per month

____ Requiring the respondent to pay spousal support in the amount of \$____ per month

____ Requiring the respondent to pay filing fees, service fees, court costs and petitioner's attorney fees.

____ I am involved in pending litigation with the respondent in the case of:

Case No.: _____

Circuit or District Judge: _____

County or City: _____

____ I have previously filed a petition for an order of protection against the respondent in the following case or cases:

Case No.: _____

Circuit Judge: _____

County: _____

The petitioner under oath states that the facts stated in the above petition are true according to the petitioner's best knowledge and belief.

Date

Petitioner's signature

STATE OF ARKANSAS
COUNTY OF _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

My Commission Expires: _____".

History. Acts 1991, No. 266, § 3; 1999, No. 55, § 1; 2005, No. 1875, § 4; 2007, No. 662, § 1; 2001, No. 1678, § 4; 2005, 314, § 2; 2009, No. 698, § 3.

A.C.R.C. Notes. Acts 2009, No. 698, § 4, provided: “The Arkansas Code Revision Commission shall redesignate the existing subsection (c) in § 9-15-203 as subsection (d) in § 9-15-203.”

Cross References. Domestic abuse

definitions, § 9-15-103.

First degree assault on family or household member, § 5-26-307.

Warrantless arrest for domestic abuse, § 16-81-113.

9-15-204. Hearing — Service.

(a)(1) When a petition is filed pursuant to this chapter, the court shall order a hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

(2) A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits.

(b)(1) Service of a copy of the petition, the ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing described in subdivision (a)(1) of this section shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

(2) If service cannot be made on the respondent, the court may set a new date for the hearing.

(c) This section does not preclude the court from setting an earlier hearing.

History. Acts 1991, No. 266, § 4; 1997, No. 895, § 1; 2009, No. 698, § 5.

CASE NOTES

Notice.

Because a protective order hearing was a special proceeding under Ark. R. Civ. P. 81, the notice procedures in subdivision (b)(1)(A) of this section, and not Ark. R. Civ. P. 6(c), applied; therefore, because a

respondent was timely served six days before the protective order hearing, the respondent’s motion to set aside an order of protection was properly dismissed. *Wills v. Lacefield*, 2011 Ark. 262 (2011).

9-15-205. Relief generally — Duration.

(a) At the hearing on the petition filed under this chapter, upon a finding of domestic abuse as defined in § 9-15-103, the court may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3)(A) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties.

(B)(i) If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard

to the minor children of the parties, a temporary child custody or visitation determination may be made under subdivision (a)(3)(A) of this section.

(ii) The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children;

(4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(5) Allow the prevailing party a reasonable attorney’s fee as part of the costs;

(6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order;

(7) Direct the care, custody, or control of any pet owned, possessed, leased, kept, or held by either party residing in the household; and

(8)(A) Order other relief as the court deems necessary or appropriate for the protection of a family or household member.

(B) The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

(b) Any relief granted by the court for protection under the provisions of this chapter shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists.

History. Acts 1991, No. 266, § 5; 1999, No. 139, § 1; 2009, No. 698, § 6; 2011, No. 662, § 2; 1999, No. 1551, § 2; 2007, 1049, § 1.

CASE NOTES

ANALYSIS

- Appeal.
- Evidence.
- Modification.
- Relief.
- Temporary Custody Order.
- Visitation.

Appeal.

Pursuant to Supreme Court Administrative Order No. 18(6)(c), the Court of Appeals had jurisdiction to decide a father’s appeal where the father filed a timely notice of appeal to the Court of Appeals from a final order of protection signed by a district court judge. *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

Evidence.

Evidence was sufficient to support a decision to grant an order of protection under subsection (a) of this section where a former boyfriend admitted that he left his former girlfriend threatening text messages. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

Any parent, after learning that his or her child was in a car with a certain driver during an accident, might fear the child could be harmed or suffer injury if the child were to ride in the car with that driver again, but a car accident in and of itself does not rise to the level of domestic abuse; although the father claimed he feared for the safety of the child because the mother had driven under the influence of drugs while the child and other children

were in the car, the father failed to support those allegations, and the circuit court clearly erred in finding that there was sufficient evidence to support the entry of a final order of protection against the mother. *Bohannon v. Robinson*, 2014 Ark. 458, 447 S.W.3d 585 (2014).

Circuit court's decision to enter a final order of protection was not clearly erroneous where it credited the victim's testimony that appellant pushed her down, shoved her against a wall, threatened to beat and kill her and her boyfriend, sent her text messages stating the same threats, and had violated an ex parte order of protection by sitting in a vehicle within 10 to 15 feet of her apartment. *Wornkey v. Deane*, 2017 Ark. App. 176, 517 S.W.3d 438 (2017).

Trial court's findings were not clearly erroneous in light of the evidence presented, and therefore it did not err by denying the girlfriend's petition for an order of protection because it was faced with resolving two diametrically opposed versions of events. The girlfriend testified that her boyfriend assaulted her for approximately 20 minutes, kicking her, hitting her, and choking her until she blacked out, but the boyfriend denied assaulting her, testified that she did not have any marks on her when she left his home, and had no explanation for how she received her injuries. *Walter v. Chism*, 2018 Ark. App. 127, 543 S.W.3d 550 (2018).

In granting an order of protection, it was within the purview of the circuit court to assess the witnesses' credibility, and the circuit court found petitioner's testimony that she was fearful of her husband to be credible. Thus, there was sufficient evidence to find "infliction of fear of imminent physical harm, bodily injury, or assault between family or household members" under the definition of "domestic abuse" in § 9-15-103. *Armstrong v. Armstrong*, 2019 Ark. App. 188, 574 S.W.3d 720 (2019).

Appellant's challenge to the sufficiency of the evidence to support a final order of protection was rejected where the issuing court had believed appellee, and her testimony established that appellant committed a criminal sexual act against her and that domestic abuse had taken place. Appellant's request to credit his testimony

over appellee's was rejected. *Brown v. McCauley*, 2020 Ark. App. 437 (2020).

Modification.

Although the Court of Appeals did not address the duration of the five-year order of protection because the father did not cite authority for reversal, the appellate court stated that the visitation determination was a temporary determination under the Domestic Abuse Act that could stand until the court with original jurisdiction entered a subsequent order regarding the children under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-204, and that orders of protection are also subject to modification under § 9-15-209. *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

Relief.

Although the issue was not preserved for review, a decision to exclude victim's former boyfriend from a residence, even if the incorrect address was given, did not amount to prejudice since this relief was clearly permitted under subsection (a) of this section. *Simmons v. Dixon*, 96 Ark. App. 260, 240 S.W.3d 608 (2006).

Circuit court properly renewed an order of protection against a husband prohibiting him from contacting his wife until a certain date, and excluded him from the marital residence and a family workplace. The husband's argument regarding the standard of review was not preserved for appeal; and he did not develop his second argument or cite any evidence to support his conclusion, and he never alerted the circuit court as to the subject statute or argued that the court's power to renew the protection order was limited to one year. *Bentley v. Bentley*, 2020 Ark. App. 254 (2020).

Temporary Custody Order.

An emergency temporary custody order is nonappealable for lack of finality. *Jones v. Jones*, 41 Ark. App. 146, 852 S.W.2d 325 (1993).

Visitation.

Upon entry of a final order of protection, the trial court did not address the issue of visitation; because an award of visitation was discretionary under subdivision (a)(3) of this section and appellant failed to raise the issue with the trial court, the appellate court declined to review it. *Hancock v. Hancock*, 2013 Ark. App. 79 (2013).

Cited: Calaway v. Crotty, 2014 Ark. App. 636, 448 S.W.3d 723 (2014).

9-15-206. Temporary order.

(a) When a petition under this chapter alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition.

(b) An ex parte temporary order of protection may:

(1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and

(2) Provide the following relief:

(A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

(D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(F)(i) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.

(ii) The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.

(c) An ex parte temporary order of protection is effective until the date of the hearing described in § 9-15-204.

(d) Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection.

History. Acts 1991, No. 266, § 6; 1997, No. 895, § 2; 1999, No. 662, § 3; 1999, No. 1551, § 3; 2009, No. 698, § 7.

CASE NOTES

Sufficient Evidence.

Evidence was sufficient to support the final order of protection entered against appellant under subsection (a) of this section, because he committed an act of do-

mestic violence against appellee while her children were present and there had been past conduct of the same or similar nature based on appellant's admissions. *Hancock v. Hancock*, 2013 Ark. App. 79 (2013).

9-15-207. Order of protection — Enforcement — Penalties — Criminal jurisdiction.

(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.

(b) An order of protection shall include a notice to the respondent or party restrained that:

(1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year's imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;

(2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition under 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2019;

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(5) A person who is a respondent or an enjoined party is restrained from harassing, stalking, or threatening a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; and

(6) A person who is a respondent or an enjoined party is restrained from engaging in other conduct that would place a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party in reasonable fear of bodily injury.

(c) For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

(d)(1) In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

(2) A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

(e) A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.

(f) When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

(g) An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

(h) An order of protection shall include either:

(1) A finding that the respondent presents a credible threat to the physical safety of a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; or

(2) An explicit prohibition against the use, attempted use, or threatened use of physical force against the person named in the order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party which would reasonably be expected to cause bodily injury.

History. Acts 1991, No. 266, § 10; substituted “January 1, 2019” for “January 1, 2007” in (b)(3); added (b)(5) and (b)(6); added (h); and made stylistic changes.

Amendments. The 2019 amendment

CASE NOTES

Criminal Jurisdiction.

Trial court had no subject-matter jurisdiction to try defendant for the crime of violation of a protective order under this section; unlike § 5-53-134, this section does not describe a criminal offense but

provides a mechanism by which a person can obtain injunctive and equitable relief for protection against domestic abuse. *Standridge v. State*, 2014 Ark. 515, 452 S.W.3d 103 (2014).

9-15-208. Law enforcement assistance.

(a) When an order of protection is issued under this chapter, upon request of the petitioner the circuit court may order a law enforcement officer with jurisdiction to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or to otherwise assist in execution or service of the order of protection.

(b) The court may also order a law enforcement officer to assist the petitioner in returning to the residence and getting personal effects.

History. Acts 1991, No. 266, § 7; 1999, No. 1551, § 5; 2017, No. 251, § 1. inserted “of protection” following “When an order” in (a).

Amendments. The 2017 amendment

9-15-209. Modification of orders.

Any order of protection issued by the circuit court pursuant to a petition filed as authorized in this chapter may be modified upon application of either party, notice to all parties, and a hearing thereon.

History. Acts 1991, No. 266, § 10.

CASE NOTES

ANALYSIS

Duration.

Jurisdiction.

Modification Not Warranted.

Modification Void.

Relation to Civil Rules.

Duration.

Although the Court of Appeals did not address the duration of the five-year order of protection because the father did not cite authority for reversal, the appellate court stated that the visitation determination was a temporary determination under the Domestic Abuse Act that could stand until the court with original jurisdiction entered a subsequent order regarding the children under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-204, and that orders of protection are also subject to modification under this section. *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

Jurisdiction.

Argument that this section had to be strictly complied with in order for the trial court to have jurisdiction was rejected because the trial court clearly had jurisdiction to enter the order of protection pursuant to § 9-15-101. The case did not present a question of jurisdiction where modification of the order was challenged. *Calaway v. Crotty*, 2013 Ark. App. 637 (2013).

Modification Not Warranted.

Trial court did not err by failing to modify an order of protection under this

section to remove certain language, to add language allowing appellant to hunt, and to limit the duration of the order because the evidence supported a finding that appellee continued to fear that appellant would harm her or her children; the trial court found credible appellee's testimony that appellant had a temper and was known to seek revenge. An attempt to relitigate the original order of protection failed because appellant failed to appeal from that order; however, the facts were relevant to determine whether changed circumstances warranted modification. *Calaway v. Crotty*, 2014 Ark. App. 636, 448 S.W.3d 723 (2014).

Modification Void.

Trial court had no authority to modify an original order of protection because the person in need of protection did not receive notice and an opportunity to be heard before the modification, as required by this section; since there was no authority to modify, that judgment was void. *Calaway v. Crotty*, 2013 Ark. App. 637 (2013).

Relation to Civil Rules.

Order of protection was governed by this section, and not Ark. R. Civ. P. 60 relating to relief from a judgment; this section provides for a hearing, along with an application and a notice. Moreover, the modifications made by the trial court were not attributed to mere mistakes or clerical error. *Calaway v. Crotty*, 2013 Ark. App. 637 (2013).

9-15-210. Contempt proceedings.

When a petitioner or any law enforcement officer files an affidavit with a circuit court that has issued an order of protection under the provisions of this chapter alleging that the respondent or person restrained has violated the order, the court may issue an order to the respondent or person restrained requiring that person to appear and show cause why he or she should not be found in contempt.

History. Acts 1991, No. 266, § 10.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Family Law, Protection Orders, 26 U. Ark. Little Rock L. Rev. 415.

9-15-211. [Repealed.]

Publisher's Notes. This section, concerning jurisdiction generally, was repealed by Acts 2011, No. 793, § 4. The section was derived from Acts 1991, No. 266, § 14.

9-15-212. Effect of no contact order.

A no contact order shall prohibit the person from making contact, directly or through an agent, except under such conditions as may be provided in the order.

History. Acts 1999, No. 662, § 4.

9-15-213. Police conduct and procedure.

All law enforcement officers shall follow the same procedures as outlined in § 16-90-1107.

History. Acts 1999, No. 1551, § 6.

9-15-214. Denial of relief prohibited.

The circuit court shall not deny a petitioner relief solely because the act of domestic or family violence and the filing of the petition did not occur within one hundred twenty (120) days.

History. Acts 1999, No. 1551, § 7.

9-15-215. Factors in determining custody and visitation.

(a) In addition to other factors that a circuit court shall consider in a proceeding in which the temporary custody of a child or temporary visitation by a parent is at issue and in which the court has made a finding of domestic or family violence, the court shall consider:

(1) As primary the safety and well-being of the child and of the parent who is the plaintiff of domestic or family violence; and

(2) The defendant's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(c) There shall be a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in

cases in which there is a finding by a preponderance of the evidence that a pattern of abuse has occurred.

History. Acts 1999, No. 1551, § 8; 2001, No. 1235, § 2.

Cross References. Award of custody, § 9-13-101.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Family Law, 24 U. Ark. Little Rock L. Rev. 483.

Note, Family Law — Relocation Disputes — From Paycheck to Paycheck: The Demotion of the Noncustodial Parent with

the Creation of the Custodial Parent's Presumptive Right to Relocate (Hollandsworth v. Knyzewski), 26 U. Ark. Little Rock L. Rev. 615.

Annual Survey of Caselaw, Family Law, 26 U. Ark. Little Rock L. Rev. 921.

CASE NOTES

ANALYSIS

Modification.
Visitation Denied.

Modification.

The polestar in making a relocation determination is the best interest of the child and the trial court should take into consideration the following matters: (1) the reason for the relocation; (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and children will relocate; (3) visitation and communication schedule for the noncustodial parent; (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate, as well as Arkansas; and (5) preference of the child, including the age, maturity, and the reasons given by the child as to his or her preference. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Relocation alone is not a material change in circumstance, and a presumption exists in favor of relocation for custodial parents with primary custody; the noncustodial parent should have the burden to rebut the relocation presumption, and the custodial parent no longer has the obligation to prove a real advantage to herself or himself and to the children in relocating. *Hollandsworth v. Knyzewski*, 353 Ark. 470, 109 S.W.3d 653 (2003).

Visitation Denied.

Denying the husband visitation with the couple's child was not an abuse of discretion where the circuit court was bound to consider its earlier finding of domestic abuse in determining visitation, and the testimony supported the finding that visitation was not in the child's best interest. *Goodson v. Bennett*, 2018 Ark. App. 444, 562 S.W.3d 847 (2018).

Cited: *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

9-15-216. Mutual orders of protection — Separate orders of protection.

(a) Except as provided in subsection (b) of this section, a circuit court shall not grant a mutual order of protection to opposing parties.

(b) Separate orders of protection restraining each opposing party may only be granted in cases in which each party:

- (1) Has properly filed and served a petition for an order of protection;
- (2) Has committed domestic abuse as defined in § 9-15-103;
- (3) Poses a risk of violence to the other; and

(4) Has otherwise satisfied all prerequisites for the type of order and remedies sought.

History. Acts 2001, No. 1437, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Practice, Procedure, and Courts, 24 U. Ark. Little Rock L. Rev. 523.

9-15-217. Order of protection — Violations — Domestic violence surveillance program — Global positioning devices — Definition.

(a)(1)(A) A person who is charged with violating an ex parte order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(B) A person who is charged with violating a final order of protection under § 5-53-134 may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order the defendant released from electronic surveillance before the adjudication of the charge.

(b) A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

(c) As used in this section, “electronic surveillance” means active surveillance technology worn by or attached to a person that is a single-piece device that immediately notifies law enforcement or other monitors of a violation of the distance requirements or locations that the defendant is barred from entering and may also include technology that:

- (1) Immediately notifies the victim of any violation;
- (2) Allows law enforcement or monitors to speak to the offender in some manner through or in conjunction with the device;
- (3) Has a loud alarm that can be activated to warn the potential victim of the offender’s presence in a place he or she is barred from entering;
- (4) Is waterproof; and
- (5) Can be tracked by either satellite or cellular phone tower triangulation.

History. Acts 2009, No. 1447, § 1.

9-15-218. Commercial mobile radio service accounts — Transfer order.

(a) Commencing July 1, 2017, at an initial or subsequent hearing on a petition filed under this subchapter, to ensure that the petitioner may maintain his or her existing wireless telephone number and the wireless numbers of minor children in the petitioner's care, the court may issue an order directing a wireless telephone service provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner:

(1) Is not the account holder; and

(2) Proves by a preponderance of the evidence that the petitioner and any minor children in the petitioner's care are the primary users of the wireless telephone numbers that will be ordered transferred by a court under this subsection.

(b)(1) An order transferring the billing responsibility for and rights to the wireless telephone number or numbers to a petitioner under subsection (a) of this section shall be a separate order that is directed to the wireless telephone service provider.

(2) The order shall list:

(A) The name and billing telephone number of the account holder;

(B) The name and contact information of the petitioner to whom the telephone number or numbers will be transferred; and

(C) Each telephone number to be transferred to the petitioner.

(3) The court shall ensure that the petitioner's contact information is not provided to the account holder in proceedings held under this subchapter.

(4) The order shall be served on the wireless telephone service provider's agent for service of process listed with the Secretary of State.

(5) The wireless service provider shall notify the requesting party if the wireless telephone service provider cannot operationally or technically effectuate the order due to certain circumstances, including when:

(A) The account holder has already terminated the account;

(B) Differences in network technology prevent the functionality of a device on the network; or

(C) There are geographic or other limitations on network or service availability.

(c)(1) Upon a wireless telephone service provider's transfer of billing responsibility for and rights to a wireless telephone number or numbers to a petitioner under subsection (b) of this section, the petitioner shall assume:

(A) Financial responsibility for the transferred wireless telephone number or numbers;

(B) Monthly service costs; and

(C) Costs for any mobile device associated with the wireless telephone number or numbers.

(2) A transfer ordered under subsection (a) of this section does not preclude a wireless telephone service provider from applying any

routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility for a wireless telephone number or numbers and any devices attached to that number or numbers, including without limitation identification, financial information, and customer preferences.

(d) This section does not affect the ability of the court to apportion the assets and debts of the parties, or the ability to determine the temporary use, possession, and control of personal property under § 9-12-301 et seq.

(e) Notwithstanding any other provision of the law, a wireless telephone service provider, or an officer, employee, assign, or agent of the wireless telephone service provider is not civilly liable for action taken in compliance with an order issued under this subchapter or for a failure to process an order issued under this subchapter.

History. Acts 2017, No. 577, § 2.

SUBCHAPTER 3 — ORDERS OF PROTECTION FROM OTHER JURISDICTIONS

SECTION.

9-15-301. [Repealed.]

9-15-302. Full faith and credit.

SECTION.

9-15-303. Immunity from liability.

Effective Dates. Acts 1995, No. 995,
§ 8: Oct. 1, 1995.

9-15-301. [Repealed.]

Publisher's Notes. This section, concerning the filing of out-of-state orders of protection, was repealed by Acts 2003, No.

651, § 1. The section was derived from Acts 1995, No. 995, § 2.

9-15-302. Full faith and credit.

(a) An order of protection shall be afforded full faith and credit by the courts of this state and shall be enforced by law enforcement as if it were issued in this state if the order of protection:

(1) Meets the requirements of subsection (b) or subsection (c) of this section and is issued by a court of another state, a federally recognized Indian tribe, or a territory; or

(2) Is a military order of protection as defined under § 5-53-134(f)(1).

(b) An order of protection issued by a court of another state, a federally recognized Indian tribe, or a territory meets the requirements of this section if:

(1) The court had jurisdiction over the parties and matters under the laws of the other state, the federally recognized Indian tribe, or the territory; and

(2)(A) Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process.

(B) In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws or rules of the other state, the federally recognized Indian tribe, or the territory and, in any event, within a reasonable time after the order is issued sufficient to protect the due process rights of the party against whom the order is enforced.

(c) An order of protection issued against both the petitioner and the respondent by a court of another state, a federally recognized Indian tribe, or a territory shall not be enforceable against the petitioner unless:

(1) The respondent filed a cross or counter petition, complaint, or other written pleading seeking an order of protection;

(2) The issuing court made specific findings against both the petitioner and the respondent; and

(3) The issuing court determined that each party was entitled to an order.

(d)(1) A person seeking recognition and enforcement of an out-of-state order of protection under this section may present a copy of the order of protection to the local law enforcement office in the city or county where enforcement of the order may be necessary.

(2) After receiving a copy of the order of protection, the local law enforcement office shall enter the order into the Arkansas Crime Information Center's protection order registry file.

(3) There shall be no fee for entering the out-of-state order of protection.

(4) The law enforcement office shall not notify the party against whom the order has been issued that an out-of-state order of protection has been entered in this state.

(5) Entry of the out-of-state order of protection into the center's protection order registry file shall not be required for enforcement of the order of protection in this state.

(e)(1)(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that an out-of-state order of protection exists.

(B) A law enforcement officer may rely upon:

(i) An out-of-state order of protection that has been provided to the officer by any source; or

(ii)(a) The statement of any person protected by an out-of-state order of protection that the order exists; and

(b) Verification by the clerk of the court of the other state, the federally recognized Indian tribe, or the territory in writing, by telephone, or by facsimile transmission or other electronic transmission.

(2)(A) When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that the terms of the order have been violated.

- (B) The law enforcement officer may rely upon:
 - (i) Any events he or she witnessed;
 - (ii) The statement of any person who claims to be a witness; or
 - (iii) Any other evidence.

(3) A law enforcement officer shall not refuse to enforce the terms of the order of protection on the grounds that the order has not been filed with the local law enforcement office or entered into the center’s protection order registry file unless the law enforcement officer has a reasonable belief that the order is not authentic on its face.

History. Acts 1995, No. 995, § 3; 2003, No. 651, § 2; 2017, No. 515, § 5.

Amendments. The 2017 amendment rewrote (a).

Cross References. Violation of an order of protection, § 5-53-134.

9-15-303. Immunity from liability.

- (a) Law enforcement officers and law enforcement agencies shall be immune from civil or criminal liability if acting in good faith in an effort to comply with this subchapter.
- (b) A military order of protection as defined under § 5-53-134(f)(1) shall be enforced by law enforcement of this state according to the provisions of this chapter.

History. Acts 1995, No. 995, § 4; 2003, No. 651, § 3; 2017, No. 515, § 6.

Amendments. The 2017 amendment

designated the existing language as (a); and added (b).

SUBCHAPTER 4 — SPOUSAL ABUSE SAFETY PLAN ACT

SECTION.	SECTION.
9-15-401. Title.	9-15-405. Educational and training materials.
9-15-402. Findings — Purpose.	9-15-406. Rules.
9-15-403. Definitions.	9-15-407. Reporting.
9-15-404. Safety plans and education.	

9-15-401. Title.

This subchapter shall be known and may be cited as the “Spousal Abuse Safety Plan Act”.

History. Acts 2007, No. 1414, § 1.

9-15-402. Findings — Purpose.

- (a) The General Assembly finds that:
 - (1) There are many resources to support victims of domestic abuse after the abuse has occurred. However, the issues of how to prevent spousal abuse and the possible solution of creating a safety plan for the spouse and the children in the household have received very little attention;

(2) Exposure to domestic abuse and spousal abuse has a devastating impact on both the children and adults in households and communities, regardless of whether they are direct victims of abuse or witnesses to it; and

(3) Children exposed to such violence at an early age are likely to become either perpetrators of abuse or victims of violence in adulthood, which is a cycle that can only be stopped through intervention and education.

(b) The purpose of this subchapter is to reduce the occurrence of spousal abuse and to reduce the exposure of children to spousal abuse by creating a safety plan for the spouse that is a victim of the spousal abuse and for the children in the household.

History. Acts 2007, No. 1414, § 1.

9-15-403. Definitions.

As used in this subchapter:

(1) “Emotional abuse” means any of the following acts:

(A) Verbally attacking or threatening a spouse by yelling, screaming, or name-calling;

(B) Using criticism, social isolation, intimidation, or exploitation to dominate a spouse;

(C) Criminally harassing a spouse;

(D) Stalking a spouse;

(E) Threatening a spouse or his or her loved ones;

(F) Damaging a spouse’s possessions; or

(G) Harming the pet of a spouse;

(2)(A) “Physical abuse” means any of the following acts:

(i) Using physical force in a way that injures a spouse or puts him or her at risk of being injured; or

(ii) Beating, hitting, shaking, pushing, choking, biting, burning, kicking, or assaulting a spouse with a weapon.

(B) “Physical abuse” may consist of one (1) or more incidents described under subdivision (2)(A) of this section;

(3)(A) “Sexual abuse” means any of the following acts:

(i) Forcing a spouse to participate in unwanted, unsafe, or degrading sexual activity; or

(ii) Using ridicule or other tactics to try to denigrate, control, or limit a spouse’s sexuality or reproductive choices.

(B) “Sexual abuse” includes rape, sexual assault, or sexual harassment; and

(4)(A) “Spousal abuse” means an act of violence or mistreatment that a woman or a man may experience at the hands of his or her marital partner, regardless of the timing of the act in terms of the stage of the relationship.

(B) “Spousal abuse” includes any of the following committed by a spouse against his or her spouse:

(i) Emotional abuse;

- (ii) Physical abuse; or
- (iii) Sexual abuse.

History. Acts 2007, No. 1414, § 1.

9-15-404. Safety plans and education.

The purpose of this subchapter is to:

- (1) Develop increased and improved security measures that provide greater protection for victims of spousal abuse, especially those who have orders of protection;
- (2) Help victims create a safety plan to keep them and their children as safe as possible by developing publications as described under § 9-15-405 on what to do and where to go if danger occurs;
- (3) Make safety plan publications as described under § 9-15-405 available in public health centers and for distribution to victims by police officers when responding to spousal abuse calls;
- (4) Create special training initiatives regarding the dynamics of spousal abuse for police intake officers, health officials, and social workers in order to help ensure a continuously improving response to spousal abuse;
- (5) Encourage the development of community-based, civic-based, and faith-based healthy relationship courses to teach to both adolescent boys and adolescent girls as they begin to date:
 - (A) The elements of healthy relationships;
 - (B) Acceptable and unacceptable behavior in relationships;
 - (C) The concept of respect;
 - (D) Conflict resolution techniques;
 - (E) Antiviolence; and
 - (F) The prevention of sexual assault and sexual harassment;
- (6) Help raise awareness about the devastating impact that spousal abuse has on children and families; and
- (7) Assist with the development of increased protection of victims of spousal abuse by establishing standards for protection and response by convening a committee of relevant experts in the field of health care and law enforcement to recommend standards to the General Assembly.

History. Acts 2007, No. 1414, § 1.

9-15-405. Educational and training materials.

- (a) The Arkansas Child Abuse/Rape/Domestic Violence Commission, in consultation with experts on spousal abuse prevention and intervention, shall develop educational material and training material to address the issues under this subchapter.
- (b) The educational material and training material shall be published and distributed around the state.

History. Acts 2007, No. 1414, § 1.

9-15-406. Rules.

The Arkansas Child Abuse/Rape/Domestic Violence Commission shall promulgate rules to implement and administer this subchapter.

History. Acts 2007, No. 1414, § 1.

9-15-407. Reporting.

The Arkansas Child Abuse/Rape/Domestic Violence Commission shall report annually to the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Interim Committee on Children and Youth regarding:

- (1) The status of the implementation and administration of this subchapter and its purposes; and
- (2) Any recommended changes in the law to improve the prevention of or intervention into spousal abuse situations.

History. Acts 2007, No. 1414, § 1.

CHAPTER 16

FAMILY PRESERVATION SERVICES PROGRAM ACT

SECTION.	SECTION.
9-16-101. Title.	9-16-106. Children qualified to receive services.
9-16-102. Definition.	9-16-107. Provision of services — Reasonable effort — Acceptance not an admission — Activity of family members.
9-16-103. Director of the Division of Children and Family Services — Duties.	9-16-108. Evaluation.
9-16-104. Division of Children and Family Services — Duties.	9-16-109. Provision of services — Funding.
9-16-105. Provision of services by contract.	

9-16-101. Title.

This chapter shall be known as the “Family Preservation Services Program Act”.

History. Acts 1991, No. 1025, § 1; 2001, No. 906, § 1.

9-16-102. Definition.

As used in this chapter, “family preservation services” means services for children and families that are designed to help families at risk or in crisis, including adoptive and extended families, and include:

- (1) Service programs designed to help a child:
 - (A) When safe and appropriate, be returned to the family from which he or she has been removed;
 - (B) Be placed for adoption;
 - (C) Be placed with a legal guardian; and

(D) If adoption or legal guardianship is determined not to be safe and appropriate for the child, be placed in some other planned, permanent living arrangement;

(2) Preplacement preventive services programs, such as intensive family preservation programs, designed to help a child at risk of foster care placement remain safely with his or her family;

(3) Service programs designed to provide follow-up care to a family to which a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers, including foster parents; and

(5) Services designed to improve parenting skills by reinforcing a parent's confidence in his or her strengths and by helping a parent identify where improvement is needed and to obtain assistance in improving those skills with respect to matters such as child development, family budgeting, coping with stress, and health and nutrition.

History. Acts 1991, No. 1025, § 2;
2001, No. 906, § 2; 2011, No. 793, § 5.

9-16-103. Director of the Division of Children and Family Services — Duties.

The Director of the Division of Children and Family Services of the Department of Human Services shall:

(1)(A) Make family preservation services accessible to all cases in which a child is about to be placed outside his or her home, or in which a child has been placed outside his or her home, and in which the goal is reunification.

(B) The director shall make family preservation services accessible to all cases in which a child is about to be removed or reunification is the goal and the provision of such services is appropriate;

(2) Ensure that statewide availability of family preservation services is accomplished in an orderly fashion, with modification based on analysis of an annual evaluation report; and

(3) Continue the implementation of family preservation services by consultation with professionals who are nationally recognized in the field.

History. Acts 1991, No. 1025, § 3;
2001, No. 906, § 3.

9-16-104. Division of Children and Family Services — Duties.

(a) The Division of Children and Family Services of the Department of Human Services shall be the lead administrative agency for family preservation services and may receive funding for the implementation of such services.

(b) The division shall:

(1) Provide the coordination of and planning for the implementation of family preservation services;

- (2) Provide standards for the family preservation services programs;
- (3) Monitor the services to ensure they meet measurable standards of performance as set forth in state law and as developed by the division; and
- (4) Provide the initial training curriculum and approve any on-going curriculum required by providers of family preservation services.

History. Acts 1991, No. 1025, § 4.

9-16-105. Provision of services by contract.

(a) The Division of Children and Family Services of the Department of Human Services may provide family preservation services directly or may contract with a private, nonprofit social service agency or qualified individual to provide such services.

(b) In the event a nonprofit social service agency or qualified individual is contracted by the Department of Human Services, to provide family preservation services, the contract shall include requirements for:

- (1) Provider acceptance of any client referred by the department for family preservation services;
- (2) Limitation of caseload;
- (3) Availability of twenty-four-hour crises intervention services to families served by the program;
- (4) Completion of the required training curriculum for family preservation services; and
- (5) Provision of and conduct of an internal program evaluation and cooperation with an external evaluation as directed by the division.

History. Acts 1991, No. 1025, § 5;
2001, No. 906, § 4.

9-16-106. Children qualified to receive services.

(a)(1) Family preservation services shall be provided to those children who are placed out-of-home for whom the goal is reunification and for those children who are at actual, imminent risk of out-of-home placement in situations in which family preservation services afford effective protection of children, youth, families, and the community.

(2) This shall include children:

(A) Who are at risk of removal as dependent, abused, or neglected; and

(B) Whose families are in conflict such that they are unable to exercise reasonable control of the child.

(b) The implementation of family preservation services shall be extended to those families for whom ongoing assessment indicates protection can be maintained.

(c) Families shall not be eligible for family preservation services in which children are at risk of recurring sexual abuse perpetrated by a

member of their immediate household and whose continued safety from recurring abuse cannot be reasonably assured.

History. Acts 1991, No. 1025, § 6;
2001, No. 906, § 5.

9-16-107. Provision of services — Reasonable effort — Acceptance not an admission — Activity of family members.

(a) The provision of family preservation services to a family shall constitute a reasonable effort by the Department of Human Services to prevent the removal of a child from the child's home, provided that the family has received timely access to other services from the department for which the family is eligible.

(b) Acceptance of family preservation services shall not be considered an admission of any allegation that initiated the investigation of the family, nor shall refusal of family preservation services be considered as evidence in any proceeding except when the issue is whether the department has made reasonable efforts to prevent removal of a child.

(c) No family preservation services program shall compel any family member to engage in any activity or refrain from any activity that is not reasonably related to remedying a condition or conditions that gave rise or that could reasonably give rise to any finding of child abuse, neglect, or dependency.

History. Acts 1991, No. 1025, § 7.

9-16-108. Evaluation.

The Director of the Division of Children and Family Services of the Department of Human Services shall conduct a yearly evaluation of family preservation services that shall include the following:

(1) The number of families in which the use of family preservation services has been an alternative to placement of the child if available;

(2) The number of families receiving family preservation services, including the number of children in those families;

(3) Among those families receiving family preservation services, the number of children placed outside the home and the average cost per family of providing family preservation services;

(4) The estimated cost of out-of-home placement that would have been expended on behalf of those children who received family preservation services based on the average lengths of stay and the average costs of out-of-home placements;

(5) The number of children who remain unified with their families six (6) months and one (1) year after completion of family preservation services; and

(6) An overall evaluation of the progress of family preservation services programs during the preceding year, recommendations for improvements in delivery of this service, and a plan for the continued

development of family preservation services to ensure progress towards statewide availability.

History. Acts 1991, No. 1025, § 8; 2001, No. 906, § 6.

9-16-109. Provision of services — Funding.

The Director of the Division of Children and Family Services of the Department of Human Services may use funds that become available through an increase in reimbursement of funds from family preservation services from Title IV-E of the Social Security Act as amended by Pub. L. No. 96-272, for the purposes of providing family preservation services to children who would otherwise be removed from their homes or are receiving services to achieve reunification.

History. Acts 1991, No. 1025, § 9.

U.S. Code. Title IV-E of the Social

Security Act, referred to in this section, is codified as 42 U.S.C. § 670 et seq.

CHAPTER 17

UNIFORM INTERSTATE FAMILY SUPPORT ACT

ARTICLE.

1. GENERAL PROVISIONS.
2. JURISDICTION.
3. CIVIL PROVISIONS OF GENERAL APPLICATION.
4. ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE.
5. ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION.
6. REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER.
7. SUPPORT PROCEEDING UNDER CONVENTION.
8. INTERSTATE RENDITION.
9. MISCELLANEOUS PROVISIONS.

A.C.R.C. Notes. Acts 1993, No. 468, § 7, provided: “If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.”

Cross References. For comments regarding the Uniform Interstate Family Support Act, see Commentaries Volume B.

Effective Dates. Acts 1993, No. 468, § 9: Mar. 12, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that currently one in four children in the United States grows up in a single parent household and that millions of these children fail to receive the financial support that they are

owed; that this financial support is crucial to sustaining family life and often to averting outright poverty; that children whose parents live in different states suffer for the most since a conflict between jurisdictions can often stand as a serious impediment to the enforcement of a child support order; that this act provides for one-state control of a case and for a clear and efficient method of interstate case processing; and that this act should therefore be given immediate effect. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2015, No. 888, § 2: July 1, 2015. Emergency clause provided: “It is found

that the Uniform Interstate Family Support Act has to comply with federal law, and it is determined by the General Assembly of the State of Arkansas that it is necessary that the act be effective no later than the first day of the first calendar

quarter beginning after sine die to comply with federal law. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2015."

RESEARCH REFERENCES

Am. Jur. 23 Am. Jur. 2d, Desert. & N., § 74 et seq.

24A Am. Jur. 2d, Divorce & S., § 1061 et seq.

Ark. L. Notes. Laurence, Protecting Alimony: Steps to Take in Contemplation of Default under a Divorce Decree, 1985 Ark. L. Notes 57.

Brummer, Statutory Primer: The Uniform Interstate Family Support Act, 1994 Ark. L. Notes 77.

Ark. L. Rev. Leflar, Conflict of Laws: Arkansas, 1978-82, 36 Ark. L. Rev. 191.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

C.J.S. 67A C.J.S., Parent & C, § 265 et seq.

U. Ark. Little Rock L.J. Survey of Arkansas Law, Family Law, 1 U. Ark. Little Rock L.J. 200 (1978).

Legislative Survey, Family Law, 16 U. Ark. Little Rock L.J. 131.

CASE NOTES

Reciprocity.

A sister state's failure to enact the Uniform Interstate Family Support Act does not permit the court to decline to enforce a child support order of a sister state filed pursuant to this chapter. Jefferson County Child Support Enforcement Unit v. Hollands, 327 Ark. 456, 939 S.W.2d 302 (1997).

Mother validly assigned her right to collect child support from the father to the

state of Missouri, which meant that pursuant to this chapter, Arkansas recognized the collection orders from Missouri. Clemmons v. Office of Child Support Enforcement, 345 Ark. 330, 47 S.W.3d 227 (2001).

Cited: Chaisson v. Ragsdale, 323 Ark. 373, 914 S.W.2d 739 (1996); Davis v. Child Support Enforcement Unit, 326 Ark. 677, 933 S.W.2d 798 (1996).

ARTICLE 1

GENERAL PROVISIONS

SECTION.

9-17-101. Short title.

9-17-102. Definitions.

9-17-103. State tribunal and support enforcement agency.

9-17-104. Remedies cumulative.

SECTION.

9-17-105. Application of chapter to resident of foreign country and foreign support proceeding.

Cross References. Employment of attorneys to enforce child support, § 9-14-210.

9-17-101. Short title.

This chapter may be cited as the “Uniform Interstate Family Support Act”.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote this section.

Publisher’s Notes. Former § 9-17-101 has been amended and renumbered as § 9-17-102.

9-17-102. Definitions.

In this chapter:

(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) “Child-support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

(3) “Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

(4) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) which has been declared under the law of the United States to be a foreign reciprocating country;

(B) which has established a reciprocal arrangement for child support with this state as provided in § 9-17-308;

(C) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or

(D) in which the Convention is in force with respect to the United States.

(6) “Foreign support order” means a support order of a foreign tribunal.

(7) “Foreign tribunal” means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(8) “Home state” means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from

birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(10) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by the income-withholding law of this state, to withhold support from the income of the obligor.

(11) "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

(12) "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(13) "Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

(14) "Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

(15) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(16) "Obligee" means:

(A) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(B) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(C) an individual seeking a judgment determining parentage of the individual's child; or

(D) a person that is a creditor in a proceeding under Article 7.

(17) "Obligor" means an individual, or the estate of a decedent that:

(A) owes or is alleged to owe a duty of support;

(B) is alleged but has not been adjudicated to be a parent of a child;

(C) is liable under a support order; or

(D) is a debtor in a proceeding under Article 7.

(18) "Outside this state" means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(20) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(21) “Register” means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country.

(22) “Registering tribunal” means a tribunal in which a support order or judgment determining parentage of a child is registered.

(23) “Responding state” means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

(24) “Responding tribunal” means the authorized tribunal in a responding state or foreign country.

(25) “Spousal-support order” means a support order for a spouse or former spouse of the obligor.

(26) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

(27) “Support enforcement agency” means a public official, governmental entity, or private agency authorized to:

(A) seek enforcement of support orders or laws relating to the duty of support;

(B) seek establishment or modification of child support;

(C) request determination of parentage of a child;

(D) attempt to locate obligors or their assets; or

(E) request determination of the controlling child-support order.

(28) “Support order” means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

(29) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 1-3; 2015, No. 888, § 1.

Publisher’s Notes. This section was formerly codified as § 9-17-101.

Amendments. The 2015 amendment deleted former (7); inserted present (3), (5) through (7), (12), and (18) through (20), and redesignated the remaining subdivisions accordingly; added “or foreign country” in (2); added “or foreign country” twice in (8); rewrote (11); in (13) and (14), deleted “renders” preceding “a judgment”

and added “of a child”; inserted “of a state or foreign country” in (14); rewrote (16); in (17), redesignated former (i)-(iii) as (A)-(C), and added (D); rewrote (21); inserted “or judgment determining parentage of a child” in (22); rewrote (23); added “or foreign country” in (24); in (26), substituted “under” for “subject to”, deleted the former (i) designation, inserted “nation or” preceding “tribe”, and deleted former (ii); in (27), inserted “governmental entity, or private”, redesignated former (i)-(iv) as

(A)-(D), added “of a child” in (C), and added (E); rewrote (28); and added “of a child” in (29).

CASE NOTES

ANALYSIS

In General.
Applicability.

In General.

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of the husband’s obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

Applicability.

Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. § 1901 et seq., did not apply to the adoption of the minor child because she was not an “Indian child” as defined in 25 U.S.C. § 1903(4), this section did not serve as Arkansas recognition of the tribe and did not apply to grant Indian child status to the minor child. *Vick v. Cecil (In re A.M.C.)*, 368 Ark. 369, 246 S.W.3d 426 (2007).

Cited: *Tompkins v. Tompkins*, 2020 Ark. App. 122, 597 S.W.3d 99 (2020).

9-17-103. State tribunal and support enforcement agency.

(a) The circuit court is the tribunal of this state.

(b) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance Administration is the support enforcement agency of this state.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Publisher’s Notes. This section was formerly codified as § 9-17-102.

Amendments. The 2015 amendment rewrote the section heading; inserted the (a) designation; and added (b).

9-17-104. Remedies cumulative.

(a) Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

(b) This chapter does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Publisher’s Notes. This section was formerly codified as § 9-17-103.

Amendments. The 2015 amendment added the (a) designation; added “or the recognition of a foreign support order on the basis of comity” in (a); and added (b).

9-17-105. Application of chapter to resident of foreign country and foreign support proceeding.

(a) A tribunal of this state shall apply Articles 1 through 6 and, as applicable, Article 7 to a support proceeding involving:

- (1) a foreign support order;
- (2) a foreign tribunal; or
- (3) an obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6.

(c) Article 7 applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6, Article 7 controls.

History. Acts 2015, No. 888, § 1.

ARTICLE 2

JURISDICTION

PART.

1. EXTENDED PERSONAL JURISDICTION.
2. PROCEEDINGS INVOLVING TWO OR MORE STATES.
3. RECONCILIATION WITH ORDERS OF OTHER STATES.

PART 1 — EXTENDED PERSONAL JURISDICTION

SECTION.

9-17-201. Bases for jurisdiction over non-resident.

SECTION.

9-17-202. Duration of personal jurisdiction.

Publisher's Notes. Part A of this article was redesignated as Part 1 by Acts 1997, No. 1063, § 20.

9-17-201. Bases for jurisdiction over nonresident.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with summons within this state;
- (2) the individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

- (3) the individual resided with the child in this state;
- (4) the individual resided in this state and provided prenatal expenses or support for the child;
- (5) the child resides in this state as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage of a child in the Putative Father Registry maintained in this state by the Department of Health; or
- (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child-support order of another state unless the requirements of § 9-17-611 are met, or, in the case of a foreign support order, unless the requirements of § 9-17-615 are met.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “Bases” for “Basis” in the section heading; inserted the (a) designation;

in the introductory language of (a), substituted “or enforce” for “enforce, or modify” and inserted “of a child”; inserted “in a record” in (a)(2); inserted “of a child” in (a)(7); and added (b).

CASE NOTES

Other Basis.

Putative father’s contacts with Arkansas were sufficient to meet due process requirements under subdivision (8) of this section, § 16-4-101, and U.S. Const. Amend. 14, based on his agreement to submit to a paternity test in Arkansas and given the fact that he drove to Arkansas for the test that was administered in Arkansas. Moreover, the father could have reasonably anticipated being haled into court in Arkansas because a person submitting to a paternity test could foresee

the possibility that a paternity suit and support action could have been brought there, and finally, the exercise of jurisdiction over the father did not offend traditional notions of fair play and substantial justice when the burden of litigating the action was in no way unreasonable and the state had an interest in protecting its minor children and ensuring the payment of child support. *Payne v. France*, 373 Ark. 175, 282 S.W.3d 760 (2008), overruled in part, *Lawson v. Simmons Sporting Goods, Inc.*, 2019 Ark. 84, 569 S.W.3d 865 (2019).

9-17-202. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by §§ 9-17-205, 9-17-206, and 9-17-211.

History. Acts 2015, No. 888, § 1.

Publisher’s Notes. Former § 9-17-202, concerning procedure when exercising

jurisdiction over a nonresident, was derived from Acts 1993, No. 468, § 1. For the comparable section to former § 9-17-

202, see § 9-17-210.

PART 2 — PROCEEDINGS INVOLVING TWO OR MORE STATES

SECTION.

- 9-17-203. Initiating and responding tribunal of this state.
- 9-17-204. Simultaneous proceedings.
- 9-17-205. Continuing, exclusive jurisdiction to modify child-support order.

SECTION.

- 9-17-206. Continuing jurisdiction to enforce child-support order.

Publisher’s Notes. Part B of this Article was redesignated as Part 2 by Acts 1997, No. 1063, § 20.

9-17-203. Initiating and responding tribunal of this state.

Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. substituted “a tribunal of another state” for “another state” and added “or a foreign country”.

Amendments. The 2015 amendment

9-17-204. Simultaneous proceedings.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

- (1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;
- (2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and
- (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

- (1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

- (2) the contesting party timely challenges the exercise of jurisdiction in this state; and
- (3) if relevant, the other state or foreign country is the home state of the child.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment deleted “in another state” at the end of the

section heading; and inserted references to “foreign country” throughout the section.

9-17-205. Continuing, exclusive jurisdiction to modify child-support order.

(a) A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this state that has issued a child-support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

(c) If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that Act which modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

(d) A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 4; 2015, No. 888, § 1.

Publisher's Notes. The subject matter

of former subsection (f) may now be found in § 9-17-211.

Amendments. The 2015 amendment

added “to modify child-support order” in the section heading; rewrote (a) and (b); deleted former (c) and redesignated and rewrote former (d) as present (c); inserted present (d); and deleted former (f).

9-17-206. Continuing jurisdiction to enforce child-support order.

(a) A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

(b) A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. rewrote the section heading; rewrote (a) and (b); and deleted former (c).

Amendments. The 2015 amendment

PART 3 — RECONCILIATION WITH ORDERS OF OTHER STATES

SECTION.

9-17-207. Determination of controlling child-support order.

9-17-208. Child-support orders for two or more obligees.

9-17-209. Credit for payments.

9-17-210. Application of chapter to non-resident subject to personal jurisdiction.

SECTION.

9-17-211. Continuing, exclusive jurisdiction to modify spousal-support order.

Publisher’s Notes. Part C of this Article was redesignated as Part 3 by Acts 1997, No. 1063, § 20.

9-17-207. Determination of controlling child-support order.

(a) If a proceeding is brought under this chapter and only one tribunal has issued a child-support order, the order of that tribunal controls and must be recognized.

(b) If a proceeding is brought under this chapter, and two or more child-support orders have been issued by tribunals of this state, another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter:

(A) an order issued by a tribunal in the current home state of the child controls; or

(B) if an order has not been issued in the current home state of the child, the order most recently issued controls.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state shall issue a child-support order, which controls.

(c) If two or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls and must be so recognized under subsection (b). The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6, or may be filed as a separate proceeding.

(d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(e) The tribunal that issued the controlling order under subsection (a), (b), or (c) has continuing jurisdiction to the extent provided under § 9-17-205 or § 9-17-206.

(f) A tribunal of this state that determines by order which is the controlling order under subsection (b)(1) or (2) or subsection (c), or that issues a new controlling order under subsection (b)(3) shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by § 9-17-209.

(g) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this chapter.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 5; 2015, No. 888, § 1.

A.C.R.C. Notes. The 2015 amendment added “and must be so recognized”, and this language is not part of the uniform language of the “Uniform Interstate Family Support Act of 2008” in § 9-17-207(c).

The 2015 amendment added “subsec-

tion”, and this language is not part of the uniform language of the “Uniform Interstate Family Support Act of 2008” in § 9-17-207(f).

Amendments. The 2015 amendment rewrote the section heading and the section.

9-17-208. Child-support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child-support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment deleted “Multiple” at the beginning of the

section heading; deleted “multiple” preceding “registrations” and following “as if the”; and inserted “or a foreign country”.

9-17-209. Credit for payments.

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this state, another state, or a foreign country.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote the section.

9-17-210. Application of chapter to nonresident subject to personal jurisdiction.

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of this state relating to a support order, or recognizing a foreign support order may receive evidence from outside this state pursuant to § 9-17-316, communicate with a tribunal outside this state pursuant to § 9-17-317, and obtain discovery through a tribunal outside this state pursuant to § 9-17-318. In all other respects, Articles 3 through 6 do not apply, and the tribunal shall apply the procedural and substantive law of this state.

History. Acts 2015, No. 888, § 1.

9-17-211. Continuing, exclusive jurisdiction to modify spousal-support order.

(a) A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

(c) A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal-support order.

History. Acts 2015, No. 888, § 1.

CASE NOTES

Spousal Support.

Chancery court lacked jurisdiction to consider a petition to modify a spousal support award contained in a foreign decree of divorce. *Tyler v. Talburt*, 73 Ark. App. 260, 41 S.W.3d 431 (2001) (decided under former § 9-17-205(f)).

Trial court could not modify a former

husband's alimony payments because it lacked jurisdiction; a Nevada court had exclusive jurisdiction to modify or terminate alimony where the obligation was incorporated into a Nevada divorce decree and lasted through October 2013. *Midyett v. Midyett*, 2013 Ark. App. 597 (2013) (decided under former § 9-17-205(f)).

ARTICLE 3

CIVIL PROVISIONS OF GENERAL APPLICATION

SECTION.

- 9-17-301. Proceedings under chapter.
- 9-17-302. Proceeding by minor parent.
- 9-17-303. Application of law of state.
- 9-17-304. Duties of initiating tribunal.
- 9-17-305. Duties and powers of responding tribunal.
- 9-17-306. Inappropriate tribunal.
- 9-17-307. Duties of support enforcement agency.
- 9-17-308. Duty of prosecuting attorney.
- 9-17-309. Private counsel.
- 9-17-310. Duties of state information agency.
- 9-17-311. Pleadings and accompanying documents.

SECTION.

- 9-17-312. Nondisclosure of information in exceptional circumstances.
- 9-17-313. Costs and fees.
- 9-17-314. Limited immunity of petitioner.
- 9-17-315. Nonparentage as defense.
- 9-17-316. Special rules of evidence and procedure.
- 9-17-317. Communications between tribunals.
- 9-17-318. Assistance with discovery.
- 9-17-319. Receipt and disbursement of payments.

9-17-301. Proceedings under chapter.

(a) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(b) An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 6; 2015, No. 888, § 1.

Amendments. The 2015 amendment deleted “this” preceding “chapter” in the

section heading; deleted (b) and redesignated former (c) as (b); and, in (b), substituted “initiate” for “commence” and inserted “or a foreign country”.

CASE NOTES

ANALYSIS

Purpose.
Spousal Support.

Purpose.

It is manifest from the title of this chapter, as well as the description of proceedings that may be brought under it, that the enforcement of interstate child support awards is the chapter’s purpose and focal point; the duties and powers of the responding tribunal relate to the goal of enforcing child support orders. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

Spousal Support.

When a decree was entered in Germany as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of husband’s obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

Office of Child Support Enforcement had the explicit authority to enforce spousal support orders. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

9-17-302. Proceeding by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor’s child.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment

substituted “Proceeding” for “Action” in the section heading.

9-17-303. Application of law of state.

Except as otherwise provided in this chapter, a responding tribunal of this state shall:

- (1) apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and
- (2) determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment deleted “this” preceding “state” in the section heading; in the introductory language, substituted “in this chapter” for

“by this chapter” and added “shall”; in (1), deleted “shall” at the beginning and “including the rules on choice of law” preceding “generally”; and deleted “shall” at the beginning of (2).

9-17-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 7; 2015, No. 888, § 1.

deleted “three (3) copies of” following “forward” in the introductory language of (a); and rewrote (b).

Amendments. The 2015 amendment

9-17-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to § 9-17-301(b), it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child-support order, determine the controlling child-support order, or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic-mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

(f) If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 8, 9; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “§ 9-17-301(b)” for “§ 9-17-301(c) (Proceedings under this chapter)”

in (a); substituted “not prohibited by other law” for “otherwise authorized by law” in the introductory language of (b); rewrote (b)(1); inserted “electronic-mail address” in (b)(8); and added (f).

CASE NOTES

ANALYSIS

In General.

Purpose.

Visitation.

In General.

Actions under this subchapter are not intended to open up for renewed scrutiny all issues arising out of a foreign divorce; issues such as visitation and payment of debts under the divorce decree, which are collateral matters that necessarily burden the child support determination and run counter to the goal of streamlining these proceedings, are not to be considered. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

Purpose.

It is manifest from the title of this chapter, as well as the description of proceedings that may be brought under it, that the enforcement of interstate child support awards is the chapter's purpose and focal point; the duties and powers of the responding tribunal relate to the goal of enforcing child support orders. *Chaisson v. Ragsdale*, 323 Ark. 373, 914 S.W.2d 739 (1996).

Visitation.

A chancellor may not consider collateral matters, including visitation, when faced with the issue of enforcement of child support under the act. Office of Child

Support Enforcement v. Clemmons, 65 Ark. App. 84, 984 S.W.2d 837 (1999).

9-17-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 10; 2015, No. 888, § 1. substituted “the tribunal” for “it” and “of this state” for “in this state” preceding “or another”.

Amendments. The 2015 amendment

9-17-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal of this state, another state, or a foreign country to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of communication in a record from the respondent or the respondent’s attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order; or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

(d) A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

(e) A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to § 9-17-319.

(f) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 11; 2015, No. 888, § 1.

Amendments. The 2015 amendment, in the introductory language of (b), inserted “of this state” and deleted “as appropriate” following “petitioner”; substituted “of this state, another state, or a

foreign country” for “in this state or another state” in (b)(1); substituted “notice in a record” for “a written notice” in (b)(4); substituted “communication in a record” for “a written communication” in (b)(5); inserted (c) through (e), and redesignated former (c) as (f).

CASE NOTES

Spousal Support.

Office of Child Support Enforcement has the explicit authority to enforce spousal support orders. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

When a decree was entered in Germany

as to both spousal support and child support, the Office of Child Support Enforcement had the authority to seek enforcement of husband’s obligations as to both spousal support and child support. *Office of Child Support Enforcement v. Gauvey*, 96 Ark. App. 342, 241 S.W.3d 771 (2006).

9-17-308. Duty of prosecuting attorney.

(a) If the prosecuting attorney determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the prosecuting attorney may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

(b) The prosecuting attorney may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment

inserted the (a) designation; inserted “order the agency to perform its duties under this chapter or may” in (a); and added (b).

9-17-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment made no changes to this section.

9-17-310. Duties of state information agency.

(a) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is the state information agency under this chapter.

(b) The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the place in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and Social Security.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted "names and addresses of" in (b)(2); and in (b)(3), substituted "obligee

who is an individual" for "individual obligee" and "another state or a foreign country" for "an initiating tribunal or the state information agency of the initiating state".

9-17-311. Pleadings and accompanying documents.

(a) In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under § 9-17-312, the petition or accompanying documents must provide, so far as known, the name, residential address, and Social Security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, Social Security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

(b) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the require-

ments imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote (a).

9-17-312. Nondisclosure of information in exceptional circumstances.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote the section.

9-17-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment, in (b), inserted "of this state" in the first sentence, and inserted "or foreign coun-

try" in the second sentence; and substituted "Article 6" for "article 6 (Enforcement and modification of support order after registration) of this chapter" in the second sentence in (c).

9-17-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or

through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while physically present in this state to participate in the proceeding.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. inserted “under this chapter” in (a); and inserted “physically” in (c).

Amendments. The 2015 amendment

9-17-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment made no changes to this section.

9-17-316. Special rules of evidence and procedure.

(a) The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

(b) An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

(c) A copy of the record of child-support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or

other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

(j) A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment, in (a), substituted “a nonresident party who is an individual in a tribunal” for “the petitioner in a responding tribunal” and added “of a child”; rewrote (b); inserted “of a child” in (d); in (e), substituted “outside this” for “another”, inserted “electronic”,

and substituted “record” for “writing”; in the first sentence of (f), substituted “shall” for “may”, substituted “outside this state” for “in another state”, inserted “under penalty of perjury”, and deleted “in that state” at the end; substituted “other tribunals” for “tribunals of other states” in the second sentence of (f); and added (j).

CASE NOTES

Affidavits.

Although subsection (b) of this section renders the affidavit admissible, it does not automatically admit such affidavit. It must be proffered. *State v. Rogers*, 50 Ark. App. 108, 902 S.W.2d 243 (1995).

Cited: *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996).

9-17-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment, in the first sentence, substituted “outside this state” for “of another state”, substituted “in a record” for “in writing”, in-

serted “electronic mail”, deleted “of that state” following “laws”, and deleted “in the other state” at the end; and substituted “outside this state” for “of another state” at the end of the second sentence.

9-17-318. Assistance with discovery.

A tribunal of this state may:

(1) request a tribunal outside this state to assist in obtaining discovery; and

(2) upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. substituted “outside this state” for “of another state” twice throughout; and substituted “which” for “whom” in (2).

Amendments. The 2015 amendment

9-17-319. Receipt and disbursement of payments.

(a) A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

(b) If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor’s employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

(c) The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection (b) shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. inserted the (a) designation; inserted “or a foreign country” in the second sentence in

Amendments. The 2015 amendment (a); and added (b) and (c).

ARTICLE 4**ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE****SECTION.**

9-17-401. Establishment of support order.

9-17-402. Proceeding to determine parentage.

9-17-401. Establishment of support order.

(a) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

- (1) the individual seeking the order resides outside this state; or
- (2) the support enforcement agency seeking the order is located outside this state.

(b) The tribunal may issue a temporary child-support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

- (1) a presumed father of the child;
- (2) petitioning to have his paternity adjudicated;
- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by § 9-10-120;
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

(c) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 9-17-305.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “Establishment of” for “Petition to establish” in the section heading; inserted “with personal jurisdiction over

the parties” in the introductory language of (a); substituted “outside this state” for “in another state” in (a)(1) and (a)(2); rewrote (b); and deleted “(Duties and powers of responding tribunal)” at the end of (c).

CASE NOTES**Jurisdiction.**

Where the mother and son resided in Germany and the father was an Arkansas resident, the case presented an issue of bifurcated jurisdiction; child custody issues are governed by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., while child support issues are controlled by the Uniform Interstate Family Support Act, § 9-17-101 et seq. *Tompkins v. Tompkins*, 2020 Ark. App. 122, 597 S.W.3d 99 (2020).

Where the mother and son resided in Germany and the father was an Arkansas resident, the circuit court erred by decid-

ing it lacked subject-matter jurisdiction to order child support for the son, because the circuit court had personal jurisdiction over the father for child support purposes and had subject-matter jurisdiction, under the Uniform Interstate Family Support Act, to establish a child support order upon the mother’s request, absent an existing child support order in some other forum. *Tompkins v. Tompkins*, 2020 Ark. App. 122, 597 S.W.3d 99 (2020).

Cited: *Davis v. Child Support Enforcement Unit*, 326 Ark. 677, 933 S.W.2d 798 (1996).

9-17-402. Proceeding to determine parentage.

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this chapter or a law or procedure substantially similar to this chapter.

History. Acts 2015, No. 888, § 1.

ARTICLE 5

ENFORCEMENT OF SUPPORT ORDER WITHOUT REGISTRATION

SECTION.

- 9-17-501. Employer’s receipt of income-withholding order of another state.
- 9-17-502. Employer’s compliance with income-withholding order of another state.
- 9-17-503. Employer’s compliance with two or more income-withholding orders.

SECTION.

- 9-17-504. Immunity from civil liability.
- 9-17-505. Penalties for noncompliance.
- 9-17-506. Contest by obligor.
- 9-17-507. Administrative enforcement of orders.

9-17-501. Employer’s receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor’s employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 12; 2015, No. 888, § 1.
Amendments. The 2015 amendment

inserted “by or on behalf of the obligee, or by the support enforcement agency” and deleted “or entity” preceding “defined”.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under this section, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, 402 S.W.3d 61 (2012).

9-17-502. Employer’s compliance with income-withholding order of another state.

- (a) Upon receipt of an income-withholding order, the obligor’s employer shall immediately provide a copy of the order to the obligor.
- (b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) and § 9-17-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child-support payment.

History. Acts 1997, No. 1063, § 12; 2015, No. 888, § 1.

Publisher's Notes. Former § 9-17-502 has been renumbered as § 9-17-507.

Amendments. The 2015 amendment

deleted "of this section" following "subsection (d)" in the introductory language of (c); and deleted "or agency" following "the person" in (c)(2).

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable

statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, 402 S.W.3d 61 (2012).

9-17-503. Employer's compliance with two or more income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

History. Acts 1997, No. 1063, § 12; 2015, No. 888, § 1. **Amendments.** The 2015 amendment added “Employer’s” in the section heading; substituted “two or more” for “multiple” in the section heading and twice in the section; and deleted “multiple” preceding the second occurrence of “orders”.

9-17-504. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this chapter is not subject to civil liability to an individual or agency with regard to the employer’s withholding of child support from the obligor’s income.

History. Acts 1997, No. 1063, § 12; 2015, No. 888, § 1. **Amendments.** The 2015 amendment substituted “that complies” for “who complies” and “chapter” for “article”.

9-17-505. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

History. Acts 1997, No. 1063, § 12; 2015, No. 888, § 1. **Amendments.** The 2015 amendment substituted “that willfully” for “who willfully” and “issued in” for “issued by”.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. *Schultz v. Butterball*, 2012 Ark. 163, 402 S.W.3d 61 (2012).

9-17-506. Contest by obligor.

- (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.
- (b) The obligor shall give notice of the contest to:
- (1) a support enforcement agency providing services to the obligee;
 - (2) each employer that has directly received an income-withholding order relating to the obligor; and
 - (3) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee.

History. Acts 1997, No. 1063, § 12; 2015, No. 888, § 1. **Amendments.** The 2015 amendment, in (a), inserted “by registering the order in

a tribunal of this state and filing a contest to that order as provided in Article 6, or otherwise contesting the order” and deleted “Section 9-17-604 (Choice of law)

applies to the contest” from the end; inserted “relating to the obligor” in (b)(2); and deleted “or agency” following “person” twice in (b)(3).

CASE NOTES

Statutory Scheme.

There was no merit to the argument that the income-withholding statutory scheme violated Ark. Const. Art. 2, § 13, because subsection (a) of this section al-

lowed the employee a way to seek redress in the event the support order was defective. *Schultz v. Butterball*, 2012 Ark. 163, 402 S.W.3d 61 (2012).

9-17-507. Administrative enforcement of orders.

(a) A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

(b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 12; 2015, No. 888, § 1.

Publisher's Notes. This section was formerly codified as § 9-17-502.

Amendments. The 2015 amendment,

in (a), inserted “or support enforcement agency”, substituted “in another state” for “by a tribunal of another state”, and inserted “or a foreign support order”.

CASE NOTES

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and

by doing so, it could not be held civilly liable; the registration requirement of subsection (a) of this section was triggered only if a party sought the assistance of a support-enforcement agency in the state and the obligor contested the validity of the order. *Schultz v. Butterball*, 2012 Ark. 163, 402 S.W.3d 61 (2012).

ARTICLE 6

REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

PART.

- 1. REGISTRATION OF ORDER FOR ENFORCEMENT.
- 2. CONTEST OF VALIDITY OR ENFORCEMENT.
- 3. REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.
- 4. REGISTRATION AND MODIFICATION OF FOREIGN CHILD-SUPPORT ORDER.

PART 1 — REGISTRATION OF ORDER FOR ENFORCEMENT

SECTION.

- 9-17-601. Registration of order for enforcement.
- 9-17-602. Procedure to register order for enforcement.

SECTION.

- 9-17-603. Effect of registration for enforcement.
- 9-17-604. Choice of law.

Publisher’s Notes. Part A of this article was redesignated as Part 1 by Acts 1997, No. 1063, § 20.

9-17-601. Registration of order for enforcement.

A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1. substituted “in another state” for “by a tribunal of another state” and inserted “or a foreign support order”.

Amendments. The 2015 amendment

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Annual Survey of Case Law: Family Law, 29 U. Ark. Little Rock L. Rev. 883.

9-17-602. Procedure to register order for enforcement.

(a) Except as otherwise provided in § 9-17-706, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate circuit court in this state:

- (1) a letter of transmittal to the tribunal requesting registration and enforcement;
- (2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(A) the obligor's address and Social Security number;

(B) the name and address of the obligor's employer and any other source of income of the obligor; and

(C) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in § 9-17-312, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

(d) If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

(e) A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment in the introductory language of (a), added "Except as otherwise provided in § 9-17-706", inserted "or a foreign support order", and substituted "records" for "documents and information"; substituted "person requesting" for "party seeking" in (a)(3);

redesignated (a)(4)(i)-(iii) as (a)(4)(A)-(C); in (a)(5), inserted "except as otherwise provided in § 9-17-312" and deleted "agency or" preceding "person"; substituted "an order of a tribunal of another state or a foreign support order" for "a foreign judgment" in (b); and added (d) and (e).

CASE NOTES

ANALYSIS

No Out-of-State Judgment Required.
Not Followed.
Statutory Scheme.

No Out-of-State Judgment Required.

Enforcement of decree granted; petitioner was not required to obtain a judgment for arrearages in the home state before seeking enforcement in Arkansas.

Office of Child Support Enforcement v. Troxel, 326 Ark. 524, 931 S.W.2d 784 (1996).

Mathews, 98 Ark. App. 30, 249 S.W.3d 840 (2007).

Not Followed.

Because the Arkansas Supreme Court determined that the Uniform Interstate Family Support Act, § 9-17-101 et seq., applied to a case involving the modification of child support, an appellate court was required to reverse a circuit court's decision where the registration requirements for a foreign decree under this section were not followed. Mathews v.

Statutory Scheme.

County was not required to register the income-withholding order, because the county decided to send the withholding order directly to the employer, as allowed under § 9-17-501, and the applicable statutory scheme required the employer to comply with the withholding order and by doing so, it could not be held civilly liable. Schultz v. Butterball, 2012 Ark. 163, 402 S.W.3d 61 (2012).

9-17-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

(b) A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this chapter, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted “or a foreign support order” in (a);

in (b), inserted “support” and “or a foreign country”; and in (c), deleted “article 6 of” preceding “this chapter” and inserted “support”.

CASE NOTES

Modification of Order.

Chancellor erred in modifying a Florida child support order where none of the requirements of § 9-17-611 or subsection (c) of this section were met. Office of Child

Support Enforcement v. Cook, 60 Ark. App. 193, 959 S.W.2d 763 (1998).

Cited: Office of Child Support Enforcement v. Wood, 373 Ark. 595, 285 S.W.3d 599 (2008).

9-17-604. Choice of law.

(a) Except as otherwise provided in subsection (d), the law of the issuing state or foreign country governs:

(1) the nature, extent, amount, and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

(b) In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

(c) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

(d) After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote (a) and (b); and added (c) and (d).

CASE NOTES

ANALYSIS

In General.
Construction.
Test.

In General.

Counsel's mistaken stipulation to a statute of limitations that barred child support collection did not warrant relief under Ark. R. Civ. P. 60(a). *Office of Child Support Enforcement v. Pyron*, 363 Ark. 521, 215 S.W.3d 637 (2005).

Construction.

Chancellor could not retroactively apply this section so as to breathe life into a dormant judgment, but the judgment was nevertheless entitled to enforcement under §§ 16-56-202 and 16-56-203 [repealed]. *Durham v. Ark. Dep't of Human Services/Child Support Enforcement Unit*, 322 Ark. 789, 912 S.W.2d 412 (1995).

Section 9-14-236 provides that the statute of limitations for child support now commences with an initial order of support and extends until a child reaches the age of twenty-three; however, any cause of action for child-support arrearages accruing prior to March 29, 1986, is barred. *King v. State, Office of Child Support*

Enforcement, 58 Ark. App. 298, 952 S.W.2d 180 (1997).

Trial court properly found that father met his burden of proof for purposes of contesting the registration of a 1979 Indiana child support order based on the 10-year statute of limitations in Ind. Code § 34-11-2-10 where the son turned 18 on June 30, 1991; any action to enforce the child support obligation had to have been brought by June 2001 as the appropriate statute of limitations to apply was that of Indiana. *Office of Child Support Enforcement v. Reagan*, 89 Ark. App. 262, 202 S.W.3d 10 (2005).

Test.

Determining the longer of two statutes of limitation requires a two-step analysis; first, the court must consider whether there are differing limitations on the time that a custodial parent or child of majority may initiate a proceeding to collect support arrearages and second, the court must look at the longer of the two statutes allowing how far back collection of support arrearages is allowed. *Clemmons v. Office of Child Support Enforcement*, 345 Ark. 330, 47 S.W.3d 227 (2001).

Cited: *Clemmons v. Office of Child Support Enforcement*, 72 Ark. App. 443, 37 S.W.3d 687 (2001).

PART 2 — CONTEST OF VALIDITY OR ENFORCEMENT

SECTION.	SECTION.
9-17-605. Notice of registration of order.	9-17-607. Contest of registration or enforcement.
9-17-606. Procedure to contest validity or enforcement of registered support order.	9-17-608. Confirmed order.

Publisher’s Notes. Part B of this Article was redesignated as Part 2 by Acts 1997, No. 1063, § 20.

9-17-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) that a registered support order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice unless the registered order is under § 9-17-707;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(4) of the amount of any alleged arrearages.

(c) If the registering party asserts that two or more orders are in effect, a notice must also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in subsection (b) apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

(d) Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor’s employer pursuant to the income-withholding law of this state, § 16-110-401 et seq.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 13, 14; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted “or a foreign support order” and “of this state” in the first sentence in (a); inserted “support” in (b)(1); added “unless the registered order is under § 9-17-707”

in (b)(2); deleted “and precludes further contest of that order with respect to any matter that could have been asserted” following “arrearages” in (b)(3); inserted present (c) and redesignated former (c) as (d); and inserted “the support enforcement agency or” in (d).

CASE NOTES

ANALYSIS

Constitutionality.

Notice.

Record on Appeal.

Constitutionality.

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

Notice.

California support order was not confirmed by operation of law where there was no evidence in the record that the ex-husband had received any notice specifying the correct time limitation or procedure by which to contest the registration under the Uniform Interstate Family Sup-

port Act, § 9-17-101 et seq., he specifically denied receiving any such notice, and thus, he was never served with the necessary notice required by subsection (b) of this section. *Medeiros v. Medeiros*, 2017 Ark. App. 122, 514 S.W.3d 504 (2017).

Record on Appeal.

Appellate court was unable to address the issues raised by an ex-wife in her action to enforce a California divorce decree because essential documents were missing from the record on appeal, specifically, neither the summons nor the “notice” referenced in the return of service were contained in the record, the missing summons formed the basis of the trial court’s opinion, and both documents were essential to a determination of the issues. *Medeiros v. Medeiros*, 2016 Ark. App. 522 (2016).

9-17-606. Procedure to contest validity or enforcement of registered support order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by § 9-17-605. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 9-17-607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, §§ 15, 16; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted “support” in the section heading

and throughout the section; substituted “the time required by § 9-17-605” for “twenty (20) days after notice of the registration” in the first sentence of (a); and

deleted "(Contest of registration or enforcement)" at the end of the second sentence of (a).

CASE NOTES

ANALYSIS

Constitutionality.

In General.

Failure to Contest Registration.

Request for Hearing.

Constitutionality.

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

In General.

Under this section, the only method for contesting the validity of a foreign support order is to request a hearing within 20 days after notice of registration. This requirement takes precedence over the Arkansas Rules of Civil Procedure because the Uniform Interstate Family Support Act creates a special registration proceeding for foreign support orders. *State of*

Wash. v. Thompson, 339 Ark. 417, 6 S.W.3d 82 (1999).

Failure to Contest Registration.

The failure of the obligor parent to contest the registration of a Texas decree or to request a hearing within 20 days after he received notice of its registration barred his defense to its enforcement. *Office of Child Support Enforcement v. Neely*, 73 Ark. App. 198, 41 S.W.3d 423 (2001).

Request for Hearing.

The appellee would not be barred from presenting defenses in a contest to the validity of a registered order where he was given conflicting information about the appropriate course of action to take in responding to the proceedings against him and it would not have been unreasonable for him to believe that all of the actions required by the summons and the notice of registration had been taken, albeit by another party. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

9-17-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended, or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under § 9-17-604 precludes enforcement of some or all of the alleged arrearages; or
- (8) the alleged controlling order is not the controlling order.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncon-

tested portion of the registered support order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under subsection (a) to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted “support” in the introductory language of (a); in (a)(7), deleted “(Choice of law)” following “§ 9-17-604” and inserted

“alleged”; added (a)(8); in (b), deleted “of this section” following “subsection (a)” and inserted “support” twice; and, in (c), deleted “of this section” following “subsection (a)” and substituted “a registered support order” for “the order”.

CASE NOTES

ANALYSIS

Constitutionality.
Burden of Proof.
Defense Allowed.
Laches.

Constitutionality.

The notice and hearing procedures set out in §§ 9-17-605 — 9-17-607 do not contravene the due process guarantees of the United States Constitution. *State of Wash. v. Thompson*, 339 Ark. 417, 6 S.W.3d 82 (1999).

Burden of Proof.

Trial court properly found that father met his burden of proof for purposes of contesting the registration of a 1979 Indiana child support order based on the 10-year statute of limitations in Ind. Code § 34-11-2-10 where the son turned 18 on June 30, 1991; any action to enforce the child support obligation had to have been brought by June 2001 and, because the action in Arkansas was not brought until October 2003, it was barred by the statute of limitations. *Office of Child Support En-*

forcement v. Reagan, 89 Ark. App. 262, 202 S.W.3d 10 (2005).

Defense Allowed.

Trial court properly concluded that the ex-husband was not barred from presenting any defense allowed under this section; in addition to not being properly served with the required notice, the information served indicated that he had 30 days to respond (rather than 20 days) and that a hearing had already been requested. *Medeiros v. Medeiros*, 2017 Ark. App. 122, 514 S.W.3d 504 (2017).

Laches.

Trial court did not err in applying Arkansas law on laches to defeat the ex-wife's claim given subdivision (a)(5) of this section; the ex-wife had waited nearly 25 years to initiate a proceeding to collect spousal support. *Medeiros v. Medeiros*, 2017 Ark. App. 122, 514 S.W.3d 504 (2017).

Cited: *Pulaski County Child Support Enforcement Unit v. Norem*, 328 Ark. 546, 944 S.W.2d 846 (1997); *Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998).

9-17-608. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment inserted “support”.

PART 3 — REGISTRATION AND MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE

SECTION.

- 9-17-609. Procedure to register child-support order of another state for modification.
- 9-17-610. Effect of registration for modification.
- 9-17-611. Modification of child-support order of another state.
- 9-17-612. Recognition of order modified in another state.

SECTION.

- 9-17-613. Jurisdiction to modify child-support order of another state when individual parties reside in this state.
- 9-17-614. Notice to issuing tribunal of modification.

Publisher’s Notes. Part C of this Article was redesignated as Part 3 by Acts 1997, No. 1063, § 20.

9-17-609. Procedure to register child-support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child-support order issued in another state shall register that order in this state in the same manner provided in §§ 9-17-601 through 9-17-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 17; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “§§ 9-17-601 through 9-17-608” for “part 1 of this article” in the first sentence.

9-17-610. Effect of registration for modification.

A tribunal of this state may enforce a child-support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of § 9-17-611 or § 9-17-613 have been met.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “registered support order” for “registered order”, deleted “(Modification of child-support order of another state)” following “§ 9-17-611”, and inserted “or § 9-17-613”.

9-17-611. Modification of child-support order of another state.

(a) If § 9-17-613 does not apply, upon petition a tribunal of this state may modify a child-support order issued in another state which is

registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(A) neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

(B) a petitioner who is a nonresident of this state seeks modification; and

(C) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

(b) Modification of a registered child-support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and must be so recognized under § 9-17-207 establishes the aspects of the support order which are nonmodifiable.

(d) In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes the imposition of a further obligation of support by a tribunal of this state.

(e) On the issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

(f) Notwithstanding subsections (a) through (e) and § 9-17-201(b), a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States.

History. Acts 1993, No. 468, § 1; 1997, No. 1063, § 18; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote (a); in (c), added "including the duration of the obligation of support" in the first sentence and substituted "same

child" for "child" in the second sentence; inserted present (d) and redesignated former (d) as (e); in (e), inserted "by a tribunal of this state" and substituted "the tribunal of" for "a tribunal of"; and added (f).

CASE NOTES

ANALYSIS

Construction.
Modification of Order.

Construction.

Under the former Revised Uniform Reciprocal Enforcement of Support Act, which was repealed and replaced by the Uniform Interstate Enforcement of Support Act, an order filed by an Arkansas court that imposes a child support obligation different from the obligation originally imposed by the sister state does not change or modify the sister state’s decree, absent express words of nullification. *Jefferson County Child Support Enforcement Unit v. Hollands*, 327 Ark. 456, 939 S.W.2d 302 (1997).

Modification of Order.

Chancellor erred in modifying a Florida child support order where none of the requirements of § 9-17-603(c) or this section were met. *Office of Child Support Enforcement v. Cook*, 60 Ark. App. 193, 959 S.W.2d 763 (1998); *Office of Child Support Enforcement v. Neely*, 73 Ark. App. 198, 41 S.W.3d 423 (2001).

Trial court was not required to exercise its jurisdiction over the Office of Child Support Enforcement’s petition to increase the amount of child support to be paid by the father; under subsection (a) of this section, the trial court “may” modify an order but is not required to modify such an order. *Office of Child Support Enforcement v. Wood*, 373 Ark. 595, 285 S.W.3d 599 (2008).

9-17-612. Recognition of order modified in another state.

If a child-support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

- (1) may enforce its order that was modified only as to arrears and interest accruing before the modification;
- (2) may provide appropriate relief for violations of its order which occurred before the effective date of the modification; and
- (3) shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote the section.

9-17-613. Jurisdiction to modify child-support order of another state when individual parties reside in this state.

(a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state’s child-support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article, and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

History. Acts 1997, No. 1063, § 19; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “child-support order” for “child support” in the section heading; and

in (b), substituted “Articles 1 and 2” for “articles 1 and 2 of this chapter” in the first sentence, and deleted “of this chapter” following “and 8” in the second sentence.

RESEARCH REFERENCES

Ark. L. Rev. Recent Development, Domestic Relations: Child Support Decrees — Uniform Enforcement of Foreign Judgments Act Mathews v. Mathews, 59 Ark. L. Rev. 1005.

CASE NOTES

ANALYSIS

Applicability.
Requirements Not Met.

Applicability.

This section did apply where both parties resided in the same state; thus, the jurisdictional issue on which the court of appeals certified the appeal to the Arkansas Supreme Court was an inappropriate basis for certification, and the matter was remanded to the court of appeals for consideration of the parties' arguments. Mathews v. Mathews, 368 Ark. 252, 244 S.W.3d 660 (2006).

Requirements Not Met.

Because the Arkansas Supreme Court determined that the Uniform Interstate Family Support Act, § 9-17-101 et seq., applied to a case involving the modification of child support, an appellate court was required to reverse a circuit court's decision where the registration requirements for a foreign decree under § 9-17-602 were not followed. Mathews v. Mathews, 98 Ark. App. 30, 249 S.W.3d 840 (2007).

9-17-614. Notice to issuing tribunal of modification.

Within 30 days after issuance of a modified child-support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

History. Acts 1997, No. 1063, § 19; substituted "30" for "thirty (30)" in the first sentence.

Amendments. The 2015 amendment

PART 4 — REGISTRATION AND MODIFICATION OF FOREIGN CHILD-SUPPORT ORDER

SECTION.

9-17-615. Jurisdiction to modify child-support order of foreign country.

SECTION.

9-17-616. Procedure to register child-support order of foreign country for modification.

9-17-615. Jurisdiction to modify child-support order of foreign country.

- (a) Except as otherwise provided in § 9-17-711, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child-support order otherwise required of the individual pursuant to § 9-17-611 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.
- (b) An order issued by a tribunal of this state modifying a foreign child-support order pursuant to this section is the controlling order.

History. Acts 2015, No. 888, § 1.

9-17-616. Procedure to register child-support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not under the Convention may register that order in this state under §§ 9-17-601 through 9-17-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or at another time. The petition must specify the grounds for modification.

History. Acts 2015, No. 888, § 1.

ARTICLE 7

SUPPORT PROCEEDING UNDER CONVENTION

SECTION.	SECTION.
9-17-701. Definitions.	9-17-707. Contest of registered Convention support order.
9-17-702. Applicability.	9-17-708. Recognition and enforcement of registered Convention support order.
9-17-703. Relationship of Office of Child Support Enforcement to United States central authority.	9-17-709. Partial enforcement.
9-17-704. Initiation by Office of Child Support Enforcement of support proceeding under Convention.	9-17-710. Foreign support agreement.
9-17-705. Direct request.	9-17-711. Modification of Convention child-support order.
9-17-706. Registration of Convention support order.	9-17-712. Personal information — Limit on use.
	9-17-713. Record in original language — English translation.

9-17-701. Definitions.

In this article:

- (1) “Application” means a request under the Convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

(2) “Central authority” means the entity designated by the United States or a foreign country described in § 9-17-102(5)(D) to perform the functions specified in the Convention.

(3) “Convention support order” means a support order of a tribunal of a foreign country described in § 9-17-102(5)(D).

(4) “Direct request” means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States.

(5) “Foreign central authority” means the entity designated by a foreign country described in § 9-17-102(5)(D) to perform the functions specified in the Convention.

(6) “Foreign support agreement”:

(A) means an agreement for support in a record that:

(i) is enforceable as a support order in the country of origin;

(ii) has been:

(I) formally drawn up or registered as an authentic instrument by a foreign tribunal; or

(II) authenticated by, or concluded, registered, or filed with a foreign tribunal; and

(iii) may be reviewed and modified by a foreign tribunal; and

(B) includes a maintenance arrangement or authentic instrument under the Convention.

(7) “United States central authority” means the United States Secretary of the Department of Health and Human Services.

History. Acts 2015, No. 888, § 1.

Publisher’s Notes. Former § 9-17-701, concerning proceeding to determine parentage, was derived from Acts 1993, No. 468, § 1. For the comparable section to former § 9-17-701, see § 9-17-402.

9-17-702. Applicability.

This article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this article is inconsistent with Articles 1 through 6, this article controls.

History. Acts 2015, No. 888, § 1.

9-17-703. Relationship of Office of Child Support Enforcement to United States central authority.

The Office of Child Support Enforcement of the Revenue Division of the Department of Finance Administration of this state is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

History. Acts 2015, No. 888, § 1.

9-17-704. Initiation by Office of Child Support Enforcement of support proceeding under Convention.

(a) In a support proceeding under this article, the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration of this state shall:

- (1) transmit and receive applications; and
- (2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

(b) The following support proceedings are available to an obligee under the Convention:

- (1) recognition or recognition and enforcement of a foreign support order;
- (2) enforcement of a support order issued or recognized in this state;
- (3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;
- (4) establishment of a support order if recognition of a foreign support order is refused under § 9-17-708(b)(2), (4), or (9);
- (5) modification of a support order of a tribunal of this state; and
- (6) modification of a support order of a tribunal of another state or a foreign country.

(c) The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

- (1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;
- (2) modification of a support order of a tribunal of this state; and
- (3) modification of a support order of a tribunal of another state or a foreign country.

(d) A tribunal of this state may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

History. Acts 2015, No. 888, § 1.

9-17-705. Direct request.

(a) A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

(b) A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, §§ 9-17-706 through 9-17-713 apply.

(c) In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

- (1) a security, bond, or deposit is not required to guarantee the payment of costs and expenses; and
- (2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

(d) A petitioner filing a direct request is not entitled to assistance from the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

(e) This article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

History. Acts 2015, No. 888, § 1.

9-17-706. Registration of Convention support order.

(a) Except as otherwise provided in this article, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in this state as provided in Article 6.

(b) Notwithstanding §§ 9-17-311 and 9-17-602(a), a request for registration of a Convention support order must be accompanied by:

(1) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

(c) A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

(d) A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under § 9-17-707 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

(e) The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

History. Acts 2015, No. 888, § 1.

9-17-707. Contest of registered Convention support order.

(a) Except as otherwise provided in this article, §§ 9-17-605 through 9-17-608 apply to a contest of a registered Convention support order.

(b) A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

(c) If the nonregistering party fails to contest the registered Convention support order by the time specified in subsection (b), the order is enforceable.

(d) A contest of a registered Convention support order may be based only on grounds set forth in § 9-17-708. The contesting party bears the burden of proof.

(e) In a contest of a registered Convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

(f) A tribunal of this state deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

(g) A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

History. Acts 2015, No. 888, § 1.

9-17-708. Recognition and enforcement of registered Convention support order.

(a) Except as otherwise provided in subsection (b), a tribunal of this state shall recognize and enforce a registered Convention support order.

(b) The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered Convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with § 9-17-201;

(3) the order is not enforceable in the issuing country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with § 9-17-706 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and the same purpose if the more recent

support order is entitled to recognition and enforcement under this chapter in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(A) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(B) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of § 9-17-711.

(c) If a tribunal of this state does not recognize a Convention support order under subsection (b)(2), (4), or (9):

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

(2) the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received under § 9-17-704.

History. Acts 2015, No. 888, § 1.

9-17-709. Partial enforcement.

If a tribunal of this state does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

History. Acts 2015, No. 888, § 1.

9-17-710. Foreign support agreement.

(a) Except as otherwise provided in subsections (c) and (d), a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

(b) An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

(c) A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

(d) In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in this state; or

(4) the record submitted under subsection (b) lacks authenticity or integrity.

(e) A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

History. Acts 2015, No. 888, § 1.

9-17-711. Modification of Convention child-support order.

(a) A tribunal of this state may not modify a Convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

(b) If a tribunal of this state does not modify a Convention child-support order because the order is not recognized in this state, § 9-17-708(c) applies.

History. Acts 2015, No. 888, § 1.

9-17-712. Personal information — Limit on use.

Personal information gathered or transmitted under this article may be used only for the purposes for which it was gathered or transmitted.

History. Acts 2015, No. 888, § 1.

9-17-713. Record in original language — English translation.

A record filed with a tribunal of this state under this article must be in the original language and, if not in English, must be accompanied by an English translation.

History. Acts 2015, No. 888, § 1.

ARTICLE 8**INTERSTATE RENDITION****SECTION.**

9-17-801. Grounds for rendition.

9-17-802. Conditions of rendition.

9-17-801. Grounds for rendition.

(a) For purposes of this article, “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(b) The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “The governor” for “The Gov-

ernor” in the introductory language of (b); and substituted “of the governor” for “by the governor” in (b)(2).

9-17-802. Conditions of rendition.

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least 60 days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose

rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment substituted “governor” for “Governor” throughout; and deleted “the Uniform Re-

ciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act” following “similar to this chapter” in (b).

ARTICLE 9

MISCELLANEOUS PROVISIONS

SECTION.

9-17-901. Uniformity of application and construction.

SECTION.

9-17-902. Transitional provision.

9-17-903 — 9-17-905. [Reserved.]

9-17-901. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 1993, No. 468, § 1; 2015, No. 888, § 1.

Amendments. The 2015 amendment rewrote the section.

9-17-902. Transitional provision.

This chapter applies to proceedings begun on or after July 1, 2015 to establish a support order or determine parentage of a child or to register, recognize, enforce, or modify a prior support order, determination, or agreement, whenever issued or entered.

History. Acts 2015, No. 888, § 1.

Publisher’s Notes. Former § 9-17-902, concerning short title, was derived

from Acts 1993, No. 468, § 1. For the comparable section to former § 9-17-902, see § 9-17-101.

9-17-903 — 9-17-905. [Reserved.]

Publisher’s Notes. These provisions of the Uniform Interstate Family Support Act were not enacted in Arkansas.

CHAPTER 18

QUALIFIED DOMESTIC RELATIONS ORDERS

SECTION.

9-18-101. Definitions.

9-18-102. Orders to reach retirement benefits.

SECTION.

9-18-103. Orders to reach public employees’ retirement benefits.

RESEARCH REFERENCES

ALR. What constitutes order made pursuant to state domestic law for purposes of qualified domestic relations order exemption to antialienation provision of ERISA. 79 A.L.R.4th 1081.

Am. Jur. 60A Am. Jur. 2d, Pensions, § 283 et seq.
C.J.S. 27C C.J.S. Divorce, § 963 et seq. 70 C.J.S., Pensions, §§ 143, 144.

CASE NOTES

Cited: *Tyer v. Tyer*, 56 Ark. App. 1, 937 S.W.2d 667 (1997).

9-18-101. Definitions.

As used in this chapter:

(1) “Circuit court” means the equity court of each county in the State of Arkansas created under § 16-13-301 [repealed];

(2) “Domestic relations order” means any judgment, decree, or order, including approval of a property settlement agreement, that relates to the provisions for child support, alimony payment, or marital property rights to a spouse, former spouse, child, or other dependents of a participant under Arkansas law;

(3) “Participant” means any person or member of a retirement plan;

(4) “Qualified domestic relations order” means a domestic relations order:

(A) Which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant’s retirement plan;

(B) Which clearly specifies the name and last known mailing address, if any, of the participant and the name and mailing address of each alternate payee covered by the order, the amount or percentage of the participant’s benefits to be paid by the plan to each alternate payee or the manner in which the amount or percentage is determined, the number of payments or period of time to which the order applies, and each retirement plan to which the order applies; and

(C) Which does not require the retirement plan to provide any type or form of benefit, or pay options not otherwise available under the plan, does not require the plan to provide increased benefits, and does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(5) “Retirement plan” means any retirement plan, private or public, including, but not limited to:

(A) The Arkansas Teacher Retirement System;

(B) The State Police Retirement System;

(C) The Arkansas State Highway Employees’ Retirement System;

- (D) The Arkansas Public Employees' Retirement System;
- (E) The Arkansas Judicial Retirement System; and
- (F) Other state-supported alternate retirement systems.

History. Acts 1993, No. 1143, § 1.

CASE NOTES

Appellate Review.

Circuit court clearly erred by entering a judgment against a former husband for \$115,936.81 to the benefit of his former wife after her separate account lost value

between the time a qualified domestic relations order was entered and when she elected distribution. *Duncan v. Duncan*, 2011 Ark. 348, 383 S.W.3d 833 (2011).

9-18-102. Orders to reach retirement benefits.

(a) Notwithstanding § 24-3-212 [repealed] and § 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the circuit courts of Arkansas are empowered to enter qualified domestic relations orders to reach any and all retirement annuities and benefits of any retirement plan.

(b) The qualified domestic relations order of the circuit court is authorized to specify that a designated percent of a fractional interest on any retirement benefit payment may be paid to an alternate payee.

History. Acts 1993, No. 1143, § 2; 1995, No. 644, § 1.

CASE NOTES

ANALYSIS

Appellate Review.

Award in Error.

Timeliness.

Appellate Review.

Circuit court clearly erred by entering a judgment against a former husband for \$115,936.81 to the benefit of his former wife after her separate account lost value between the time a qualified domestic relations order was entered and when she elected distribution. *Duncan v. Duncan*, 2011 Ark. 348, 383 S.W.3d 833 (2011).

Award in Error.

Circuit court held the ex-husband owed the ex-wife marital retirement benefits, to be transferred by qualified domestic relations order (QDRO), but the circuit court erred because the expert's calculations

were incorrect; an IRA was opened with the ex-husband's separate money, there was an insufficient basis to apply the 2008 QDRO to the IRA because the address and administrator listed on the QDRO did not match the IRA information, and there was no evidence supporting the calculation of the value of the nonmarital money in another fund. *Rogers v. Rogers*, 2014 Ark. App. 192, 432 S.W.3d 704 (2014).

Timeliness.

The omission of a provision dividing the husband's retirement plan from a divorce decree was not a "clerical error" within the meaning of Ark. R. Civ. P. 60(a); the chancellor lacked authority to amend the divorce decree to include a provision to divide the retirement plan more than ninety days after entry of the original divorce decree. *Tyer v. Tyer*, 56 Ark. App. 1, 937 S.W.2d 667 (1997).

9-18-103. Orders to reach public employees’ retirement benefits.

(a) Notwithstanding § 24-3-212 [repealed] and § 24-7-715 or any other laws of Arkansas limiting the application of legal process to any retirement plans, the Arkansas Teacher Retirement System, the State Police Retirement System, the Arkansas State Highway Employees’ Retirement System, the Arkansas Public Employees’ Retirement System, the Arkansas Judicial Retirement System, and any other state-supported retirement system shall comply with any qualified domestic relations order as defined in this chapter.

(b) The boards of trustees of the state-supported retirement systems shall:

- (1) Establish rules to implement this chapter; and
- (2)(A) Adopt a uniform legal form for use in preparing a qualified domestic relations order for each retirement plan.

(B)(i) The state-supported retirement system’s uniform legal form of the qualified domestic relations order shall be approved by the Legislative Council.

(ii) A state-supported retirement system is not required to comply with a qualified domestic relations order that does not substantially follow the uniform legal form approved by the Legislative Council.

History. Acts 1993, No. 1143, § 3;
2013, No. 44, § 1.

CHAPTER 19
UNIFORM CHILD-CUSTODY JURISDICTION AND
ENFORCEMENT ACT

- SUBCHAPTER.
- 1. GENERAL PROVISIONS.
 - 2. JURISDICTION.
 - 3. ENFORCEMENT.
 - 4. MISCELLANEOUS PROVISIONS.

A.C.R.C. Notes. Acts 1999, No. 668, § 406, provided: “A motion or other request for relief made in a child-custody proceeding or to enforce a child-custody determination which was commenced before the effective date of this Act is governed by the law in effect at the time the motion or other request was made.”

Publisher’s Notes. As to jurisdiction of circuit court over certain proceedings, see § 9-27-306.

For comments regarding the former Uniform Child Custody Jurisdiction Act, see Commentaries Volume B.

Cross References. Custody of child born outside of marriage, § 9-10-113.

RESEARCH REFERENCES

ALR. Significant connection jurisdiction of court under § 3(a)(2) of the UCCJA AND PKPA. 5 A.L.R.5th 550.

Abandonment and emergency jurisdiction of court under section 3(a)(3) of the UCCJA and the PKPA. 5 A.L.R.5th 788.

Home state jurisdiction of court under § 3(a)(1) of the UCCJA or PKPA. 6 A.L.R.5th 1.

Default jurisdiction of court under § 3(a)(4) of the UCCJA or PKPA. 6 A.L.R.5th 69.

Continuity of residence as a factor in contest between parent and non-parent for custody of child who has been residing with non-parent — modern status. 15 A.L.R.5th 692.

Parties' misconduct as ground for declining jurisdiction under § 8 of the UCCJA. 16 A.L.R.5th 650.

Pending proceeding in another state as ground for declining jurisdiction under § 6(a) of the UCCJA or the PKPA. 20 A.L.R.5th 700.

Inconvenience of forum as ground for declining jurisdiction under § 7 of the UCCJA. 21 A.L.R.5th 396.

Recognition and enforcement of out-of-state custody decree under § 13 of the UCCJA and the PKPA. 40 A.L.R.5th 227.

Significant connection jurisdiction of court to modify foreign child custody decree under §§ 3(a)(2) and 14(b) of the UCCJA and the PKPA. 67 A.L.R.5th 1.

Home state jurisdiction of court to modify foreign child custody decree under §§ 3(a)(1) and 14(a)(2) of the UCCJA and

the PKPA. 72 A.L.R.5th 249.

When does a court which rendered a previous child custody decree decline to assume jurisdiction to modify that decree within the meaning of § 14(a)(1) of the UCCJA and PKPA. 73 A.L.R.5th 185.

Abandonment jurisdiction of court under §§ 3(a)(3)(i) and 14(a) of the UCCJA and the PKPA to protect the interests of the child notwithstanding the existence of a prior valid custody decree rendered by a second state. 78 A.L.R.5th 465.

Ark. L. Notes. Brummer, Statutory Primer: The Uniform Interstate Family Support Act, 1994 Ark. L. Notes 77.

Ark. L. Rev. Leflar, Conflict of Laws: Arkansas 1978-82, 36 Ark. L. Rev. 191.

Leflar, Conflict of Laws: Arkansas, 1983-87, 41 Ark. L. Rev. 63.

Baron, Federal Preemption in the Resolution of Child Custody Jurisdiction Disputes, 45 Ark. L. Rev. 885.

U. Ark. Little Rock L.J. Shively, Survey of Family Law, 3 U. Ark. Little Rock L.J. 223.

Survey of Arkansas Law, Family Law, 5 U. Ark. Little Rock L.J. 143.

Survey of Arkansas Law: Family Law, 6 U. Ark. Little Rock L.J. 159.

Arkansas Law Survey, Waddell, Family Law, 7 U. Ark. Little Rock L.J. 229.

Arkansas Law Survey, Morgan, Family Law, 8 U. Ark. Little Rock L.J. 169.

Note, Parental Kidnapping in Arkansas, etc., 10 U. Ark. Little Rock L.J. 69.

Survey — Family Law, 10 U. Ark. Little Rock L.J. 207.

CASE NOTES

ANALYSIS

Purpose.
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Custody Decree Determination.
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Priority of Orders.
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Significant Connection.

Note. — The following cases were decided under the former version of this Chapter.

Purpose.

A former version of this chapter was solely for custody battles between residents of different states, and it did not confer jurisdiction on the chancery court to enter an order for support of minor children absent a divorce proceeding. *Amos v. Amos*, 282 Ark. 532, 669 S.W.2d 200 (1984).

Applicability.

A former version of this chapter did not apply where, at the time the petition was filed in the juvenile court of Garland County, the divorce action in another state had not been commenced. *Leinen v. Ark. Dep't of Human Servs.*, 47 Ark. App. 156, 886 S.W.2d 895 (1994).

A former version of this chapter did not apply where a proceeding is commenced in another state after the proceeding in this state had begun. *Blocker v. Blocker*, 57 Ark. App. 218, 944 S.W.2d 552 (1997).

The Uniform Child Custody Jurisdiction and Enforcement Act has no application to intrastate custody disputes. *Seamans v. Seamans*, 73 Ark. App. 27, 37 S.W.3d 693 (2001).

Abductions and Removals.

Custody proceeding in state to which children were removed after abduction by parent violated the purposes of a former version of this chapter to deter abductions and other unilateral removals of children undertaken to obtain custody awards. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Best Interest of Child.

The Arkansas court should not automatically defer to a prior out-of-state decree under a former version of this chapter, but instead should consider the interests of the child. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Although a foreign court had continuing jurisdiction in child custody matters following a divorce decree so as to preclude the exercise of jurisdiction by an Arkansas court under this section, an Arkansas court could still exercise jurisdiction as to custody under former § 9-13-208(b) [re-

pealed] (now see § 9-19-101 et seq.) if the child's interest so required. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Where the evidence in an interstate custody dispute showed that the children had never been to Arkansas and that the only contact with Arkansas was that the plaintiff father had moved to Arkansas, the chancellor correctly found that Arkansas did not have jurisdiction in the matter. *LeGuin v. Caswell*, 277 Ark. 20, 638 S.W.2d 674 (1982).

Where divorce was granted in Arkansas and mother and children subsequently moved out-of-state, an Arkansas court had jurisdiction to hear the evidence on the issue of whether or not a modification of resident father's visitation rights was in order since the minor children and father had a significant connection in Arkansas and there was available in Arkansas substantial evidence concerning the minor children's present or future care, protection, training and personal relationships in regard to the visitation rights; the Arkansas court was in a much better position to obtain the facts which had bearing on the fitness of father and the best interest of the minor children in regard to any change in visitation. *Brown v. Brown*, 10 Ark. App. 251, 663 S.W.2d 190 (1984).

Arkansas court had no jurisdiction to modify visitation rights under out-of-state judgment where neither the child nor her mother had any significant connection with Arkansas and there was nothing in the record to indicate or suggest that it was in the child's best interest for the trial court to assume jurisdiction to modify the visitation order made by the Alabama court. *Hogan v. Durgan*, 11 Ark. App. 172, 668 S.W.2d 57 (1984).

An Arkansas chancery court had jurisdiction to award custody of a child with minimal connections to Arkansas as it was in the best interest of the child. *Hilburn v. Hilburn*, 287 Ark. 50, 696 S.W.2d 718 (1985).

In a divorce action the court correctly found that it did have jurisdiction to determine custody of a child where it was shown that the child and at least one parent had significant connections with this state and there was available in the state substantial evidence concerning the child's present or future care, training and personal relationships. *Pomraning v.*

Pomraning, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Custody Decree Determination.

An emergency temporary custody order is nonappealable for lack of finality. *Jones v. Jones*, 41 Ark. App. 146, 852 S.W.2d 325 (1993).

Emergency.

Evidence was insufficient to establish an emergency pursuant to a former version of this chapter, but sufficient to justify the Arkansas court in preempting the continuing jurisdiction of another state as the "home state" court. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Jurisdiction predicated on a former version of this chapter was to be used only in extreme or extraordinary situations where the immediate health and welfare of the child was at stake. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Emergency powers under a former version of this chapter were limited; emergency jurisdiction should not be used to modify a custody order permanently but may be used to enter a temporary order giving a party custody only for as long as it takes to travel with the child to the proper forum to seek a permanent modification of custody, usually the home state. *Murphy v. Danforth*, 323 Ark. 482, 915 S.W.2d 697 (1996).

Where petitioners asked the Arkansas court to make them temporary guardians and, after a full hearing, to make them the permanent guardians, in effect seeking a permanent change in custody under the exercise of emergency jurisdiction, and made no suggestion that all of the evidence could not be produced in Texas, and filed their petition in intervention there, Arkansas court correctly refused to exercise emergency jurisdiction. *Murphy v. Danforth*, 323 Ark. 482, 915 S.W.2d 697 (1996).

A former version of this chapter allowed jurisdiction to decide child custody matters based on an emergency and could only be used in extreme or extraordinary situations where the immediate health and welfare of the child was at stake; these emergency powers were limited and should not be used to permanently modify a custody order, but should only be used to give a party custody for as long as it takes to travel with the child to the proper

forum to seek permanent modification. *Moore v. Richardson*, 332 Ark. 255, 964 S.W.2d 377 (1998).

Emergency jurisdiction did not exist under a former version of this chapter where the mother had custody of the children at issue under a sister state court order, the order restricted the father's visitation with the children to his sister's house, and there was no evidence that the children were in any danger from the father's brother. *Perez v. Tanner*, 332 Ark. 356, 965 S.W.2d 90 (1998).

Evidence.

Arkansas court did not err in modifying the custody order in mother's absence where there was no proceeding on the matter pending in another jurisdiction at the time and since evidence showed that Arkansas was not an inconvenient forum under this section. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Statement in settlement agreement, that both parties "anticipated" that they would move to Ohio sometime in 1988 did not constitute an agreement between the parties as to the forum in which to litigate future custody disputes. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

Federal Legislation.

A former version of this chapter and the federal Parental Kidnapping Prevention Act needed to be read in conjunction, and where they conflicted, the preemptive federal act controlled. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

Home State.

Evidence sufficient to show that Missouri was clearly the home state of the parties' children. *Biggers v. Biggers*, 11 Ark. App. 62, 666 S.W.2d 714 (1984).

Where children's home state was not Arkansas, Arkansas trial court had no jurisdiction to decide child custody. *Biggers v. Biggers*, 11 Ark. App. 62, 666 S.W.2d 714 (1984); *Fletcher v. Fletcher*, 20 Ark. App. 190, 726 S.W.2d 684 (1987).

In determining a child custody action a court could correctly find jurisdiction despite the fact that Arkansas had not been the children's home state for at least six months. *Pomraning v. Pomraning*, 13 Ark. App. 258, 682 S.W.2d 775 (1985).

Where the children resided in this state with the parent seeking modification of

the visitation provisions far longer than the six months mentioned in a former version of this chapter, this state was their "home state," and since there was no evidence of any pending custody litigation in the other state or any state other than this state, this state had jurisdiction to modify the divorce decree issued in another state. *Bell v. Bell*, 288 Ark. 468, 705 S.W.2d 891 (1986).

The appeal from the order of the chancellor which held that this state was the "home state" of the children under the uniform act, and that therefore the court was not required to give full faith and credit to the Oklahoma award of custody, was dismissed for want of an appealable order where the proof of custody was not completed and the order of custody was not entered. *Sandlin v. Sandlin*, 290 Ark. 366, 719 S.W.2d 433 (1986).

Arkansas held not home state. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987); *Fletcher v. Fletcher*, 20 Ark. App. 190, 726 S.W.2d 684 (1987).

The definition of home state used in the Parental Kidnapping Prevention Act is identical to that used in the former Uniform Child Custody Jurisdiction Act. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

When chancellor entered decree of divorce providing for joint custody, in the sense that the actual physical custody of the child would be shared by the parties on an equal time basis, Arkansas remained the home state of the child, and this status was not affected by the fact that the parties did not perfectly observe the provisions providing for transferring the child back and forth on a calendar month basis. To the extent that the child spent more time in Ohio than in Arkansas during the year, the time spent with her father in excess of that provided by the decree was in the nature of a "temporary absence" within the meaning of the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(b)(4). *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

Improper Removal.

Refusal of jurisdiction was mandatory under a former version of this chapter if the party seeking jurisdiction has improperly removed or retained the child, misrepresents to the court the whereabouts of the other party and fails to give informa-

tion regarding prior custody actions. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Where mother brought child from another jurisdiction to Arkansas without the knowledge or consent of the court-appointed custodian, it was improper for an Arkansas court to modify an order of the other jurisdiction and place custody of the child in the mother since the other jurisdiction had adopted the former Uniform Child Custody Jurisdiction Act and was exercising its jurisdiction in conformity with an act substantially the same as Arkansas' former Act. *Rodriguez v. Saucedo*, 3 Ark. App. 42, 621 S.W.2d 874 (1981).

Inconvenient Forum.

A court may decline to exercise its jurisdiction on a custody determination where it finds it to be an inconvenient forum, taking into account whether another state was the child's home state or has a closer connection with the child and parent, or that evidence of present and future care is more readily available in another state. *Mellinger v. Mellinger*, 26 Ark. App. 233, 764 S.W.2d 52 (1989).

Judicial Notice.

Court did not err in taking judicial notice of the law of another state in determining if it was in substantial conformity with Arkansas law, as required by the former Uniform Child Custody Jurisdiction Act, since the act did not require a party to plead a sister state's law and it was clear from the pleadings that the other state's law was in issue. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Jurisdiction.

Under a former version of this chapter it was a matter within the trial court's discretion whether to decline to exercise its jurisdiction when the parties have agreed, in a settlement agreement, on another, appropriate forum. *Slusher v. Slusher*, 31 Ark. App. 28, 786 S.W.2d 843 (1990).

Despite a jurisdictional provision in the consent order, the chancellor acted well within his discretion in declining jurisdiction over the issue of custody based on evidence that the child's home state was not Arkansas. *Snisky v. Whisenhunt*, 44 Ark. App. 13, 864 S.W.2d 875 (1993).

The juvenile court properly found that California was the place of the parties' residence and the location of greater available evidence regarding the child's protection and personal relationships, and the court did not abuse its discretion in declining to exercise jurisdiction. *Leinen v. Ark. Dep't of Human Servs.*, 47 Ark. App. 156, 886 S.W.2d 895 (1994).

Jurisdiction of Another State.

Where child was in Arkansas only for visitation with her father in compliance with an out-of-state court order and the record did not reflect that the foreign court was without jurisdiction, evidence was insufficient to preempt continuing jurisdiction of another state. *Caskey v. Pickett*, 274 Ark. 383, 625 S.W.2d 473 (1981).

Where a custody suit was filed in a chancery court in this state while a divorce suit had been filed in a Texas county court and a custody suit was pending in another Texas county court, it was incumbent on the chancery court, before proceeding to a final decree, to enter into direct communication with one or both Texas courts to determine, in accordance with the former Uniform Child Custody Jurisdiction Act, which was the better forum to decide custody. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Where the father sought affirmative relief in the chancery court in the form of a stay of the proceedings so that the courts of Texas and this state could have direct communication in accordance with the former Uniform Child Custody Jurisdiction Act, he could not argue that by so doing he remained beyond the jurisdictional powers of the chancery court. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Exercise of jurisdiction by Arkansas court was improper where the court disregarded the fact that another state remained the couple's home state for jurisdictional purposes. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

A court may decline to exercise its jurisdiction on a custody determination where it finds it to be an inconvenient forum, taking into account whether another state was the child's home state or has a closer connection with the child and parent, or that evidence of present and future care is more readily available in another state.

Mellinger v. Mellinger, 26 Ark. App. 233, 764 S.W.2d 52 (1989).

Where paternal grandparents were granted legal guardianship of child by Tennessee court and child resided with them in Tennessee continuously from that time, and where at the time Arkansas court exercised jurisdiction over the child, the Tennessee court had already assumed jurisdiction and entered the guardianship order, the Arkansas court erroneously exercised jurisdiction over the minor. *Elam v. Elam*, 39 Ark. App. 1, 832 S.W.2d 508 (1992).

Although when child's grandmother filed the petition in Oklahoma, the child had lived in Oklahoma only four months, Oklahoma court had jurisdiction to modify the custody order; Arkansas court did not err in according the Oklahoma order full faith and credit. *Smith v. Cotton*, 50 Ark. App. 100, 902 S.W.2d 240 (1995).

The Arkansas chancery court which entered the initial custody and visitation order properly retained continuing jurisdiction of a child custody case under the PKPA and this state's former UCCJA, and the Texas court with jurisdiction over the area where mother and child reside was without jurisdiction to permanently modify the Arkansas court's order even if the facts had shown that there was a need to exercise emergency jurisdiction. *Moore v. Richardson*, 332 Ark. 255, 964 S.W.2d 377 (1998).

Modification of Order.

The court of a state granting custody in the first instance does not retain pending jurisdiction for later modification of custody, irrespective of subsequent developments if the parties and children were living in another state. *Davis v. Davis*, 285 Ark. 403, 687 S.W.2d 843 (1985).

A chancery court which had originally granted the divorce and adjudicated custody rights maintained jurisdiction to modify the custody order on petition of the husband who still lived within the county. *O'Daniel v. Walker*, 14 Ark. App. 210, 686 S.W.2d 805 (1985).

Noncompliance.

Refusal of jurisdiction was mandatory under former § 9-13-208(b) [repealed] (now see § 9-19-101 et seq.) if the party seeking jurisdiction had improperly removed or retained the child, mispre-

sented to the court the whereabouts of the other party and failed to give information regarding prior custody actions as required by the former section. *Blosser v. Blosser*, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Notice.

Service on wife was adequate where an affidavit of personal service was entered into the record, in which the affiant stated he personally delivered a copy of the home state's summons and temporary order of custody to his wife's father, at his usual place of residence in Arkansas. *Garrett v. Garrett*, 292 Ark. 584, 732 S.W.2d 127 (1987).

An ex parte custody order, without notice, requires prompt notice and an opportunity for the absent party to present proof; before a final custody determination is made, an opportunity to be heard must be given to the contestants under this section, and the matter must be given priority and handled expeditiously under former § 9-13-224 [repealed] (now see § 9-19-101 et seq.). *Lester v. Lester*, 48 Ark. App. 40, 889 S.W.2d 42 (1994).

Notice of Foreign Judgments.

Where notice by publication under foreign law was insufficient the Arkansas trial court was not required to give full faith and credit to the foreign custody order nor to defer jurisdiction to the foreign court. *Pawlik v. Pawlik*, 2 Ark. App. 257, 620 S.W.2d 310 (1981).

A foreign court order awarding custody to the mother was not entitled to full faith and credit in the State of Arkansas because of the court's failure to acquire personal jurisdiction over the father by proper service of process. *Cella v. Cella*, 12 Ark. App. 156, 671 S.W.2d 764 (1984).

Pending Proceedings.

Arkansas court did not err in modifying custody order in parent's absence where there was no proceeding on the matter pending in another jurisdiction at the time and since Arkansas was not an inconvenient forum. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Continuing jurisdiction of foreign court in child custody matters subsequent to divorce held to constitute a proceeding pending in another state so that Arkansas court had to defer to the other state.

Blosser v. Blosser, 2 Ark. App. 37, 616 S.W.2d 29 (1981).

Since another state had adopted the former Uniform Child Custody Jurisdiction Act and was exercising its jurisdiction in conformity with an act substantially the same as Arkansas' act, the Arkansas court was precluded by a former version of this chapter from modifying foreign custodial decree. *Rodriguez v. Saucedo*, 3 Ark. App. 42, 621 S.W.2d 874 (1981).

The court of a state granting custody in the first instance does not retain pending jurisdiction for later modification of custody, irrespective of subsequent developments if the parties and children were living in another state. *Davis v. Davis*, 285 Ark. 403, 687 S.W.2d 843 (1985).

Where the children resided in this state with the parent seeking modification of the visitation provisions far longer than the six months mentioned in subdivision (a)(1) of § 9-13-203 [repealed] (now see § 9-19-101 et seq.), this state was their "home state," and since there was no evidence of any pending custody litigation in the other state or any state other than this state, this state had jurisdiction to modify the divorce decree issued in another state. *Bell v. Bell*, 288 Ark. 468, 705 S.W.2d 891 (1986).

Although a custody suit was pending in Texas, the chancery court was not required to dismiss the custody suit filed by the mother a week later where it was not at all evident from the record that the Texas court was exercising jurisdiction "substantially in conformity with" the former Uniform Child Custody Jurisdiction Act, and the father attempted to vest jurisdiction in the Texas court by obtaining custody of the child by subterfuge. *Norsworthy v. Norsworthy*, 289 Ark. 479, 713 S.W.2d 451 (1986).

Physical Presence of Child.

Arkansas court had jurisdiction to modify the custody decree under this section since the section grants jurisdiction if the state is the "home state" of the child or if it is in the best interest of the child, and the physical absence of the child is not a bar to jurisdiction. *Sanders v. Sanders*, 1 Ark. App. 216, 615 S.W.2d 375 (1981).

Preemption of Federal Law.

Under the Parental Kidnapping Prevention Act of 1980 (PKPA), the Arkansas

court had exclusive jurisdiction since it was the home state, while under the former Uniform Child Custody Jurisdiction Act (UCCJA), there might have been concurrent jurisdiction because of the “significant connection” and “substantial evidence” provision. When the UCCJA and the PKPA conflicted, the preemptive federal PKPA controlled. *Atkins v. Atkins*, 308 Ark. 1, 823 S.W.2d 816 (1992).

Priority of Orders.

An ex parte custody order, without notice, requires prompt notice and an opportunity for the absent party to present proof; before a final custody determination is made, an opportunity to be heard must be given to the contestants under former § 9-13-204 [repealed] (now see § 9-19-101 et seq.), and the matter must be given priority and handled expeditiously under this section. *Lester v. Lester*, 48 Ark. App. 40, 889 S.W.2d 42 (1994).

Questions of Fact.

Whether a chancery court of this state should exercise its jurisdiction to enter a custodial order under the provisions of

this section depends on the resolution of questions of fact. *Knox v. Knox*, 25 Ark. App. 107, 753 S.W.2d 290 (1988).

Retaining Jurisdiction.

Arkansas court did not abuse its discretion in retaining jurisdiction where Arkansas was found to be the home state of the child and where witnesses were located in both states. *Blocker v. Blocker*, 57 Ark. App. 218, 944 S.W.2d 552 (1997).

Significant Connection.

Court erred in concluding that a probate court in Jonesboro did not have jurisdiction to decide a guardianship where the parties had a significant connection with Arkansas in 1998, with both living in Jonesboro, and there was substantial evidence concerning the child’s care, even though Arkansas did not qualify as the child’s home state at that time; the circumstances were sufficient for the Arkansas probate court to have had jurisdiction to establish the guardianship in 1998. *Crosser v. Henson*, 357 Ark. 635, 187 S.W.3d 848 (2004).

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 9-19-101. Short title.
- 9-19-102. Definitions.
- 9-19-103. Proceedings governed by other law.
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SECTION.

- 9-19-108. Notice to persons outside state.
- 9-19-109. Appearance and limited immunity.
- 9-19-110. Communication between courts.
- 9-19-111. Taking testimony in another state.
- 9-19-112. Cooperation between courts — Preservation of records.

9-19-101. Short title.

This chapter may be cited as the “Uniform Child-Custody Jurisdiction and Enforcement Act”.

History. Acts 1999, No. 668, § 101.

RESEARCH REFERENCES

Ark. L. Notes. Flaccus, The New Uniform Child Custody Jurisdiction and Enforcement Act and Bankruptcy Discharge of Marital Settlement Obligations, 1999

Ark. L. Notes 41.

Ark. L. Rev. Carroll, Uniform Laws in Arkansas, 52 Ark. L. Rev. 313.

CASE NOTES

ANALYSIS

Applicability.
Clean-Up Doctrine.
Jurisdiction.
Scope of Act.

Applicability.

The former Uniform Child Custody Jurisdiction Act applied to a proceeding by a grandparent for visitation. *Bruner v. Tadlock*, 338 Ark. 34, 991 S.W.2d 600 (1999).

Clean-Up Doctrine.

The clean-up doctrine did not allow an Arkansas court to decide issues of child support and alimony after it properly acquired jurisdiction under the former Uniform Child Custody Jurisdiction Act, § 9-13-201 [repealed] et seq., of child custody and visitation issues. *Fox v. Fox*, 68 Ark. App. 281, 7 S.W.3d 339 (1999).

Jurisdiction.

In the context of personal jurisdiction in a child custody or guardianship case, personal jurisdiction over a party requires the appellate court to consider whether Arkansas remains the “home state” as defined by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101, et seq.; because such an analysis necessarily turns upon some fact to be

determined by the trial court, a writ of prohibition is not the proper remedy to determine the issue, and the related issue of the trial court’s continuing jurisdiction under § 9-19-202 also involves a similar factual determination. *Finney v. Cook*, 351 Ark. 367, 94 S.W.3d 333 (2002).

Scope of Act.

The former Uniform Child Custody Jurisdiction Act, § 9-13-201 [repealed] et seq., is solely for custody disputes between residents of different states and does not confer jurisdiction on the chancery court to enter an order for support of minor children absent a divorce proceeding. *Fox v. Fox*, 68 Ark. App. 281, 7 S.W.3d 339 (1999).

Wife’s full faith and credit argument was rejected as the Arkansas Uniform Child Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., was the exclusive method for determining the proper state for jurisdictional purposes. *Harter v. Szykowny*, 2014 Ark. App. 701, 451 S.W.3d 215 (2014).

Cited: Ark. Dep’t of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002); *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004); *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005); *Hatfield v. Miller*, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

9-19-102. Definitions.

In this chapter:

(1) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(2) “Child” means an individual who has not attained eighteen (18) years of age.

(3) “Child-custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) “Child-custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect,

abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter 3 of this chapter.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child-custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child-custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child-custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child-custody determination is made.

(11) "Modification" means a child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child-custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

History. Acts 1999, No. 668, § 102.

RESEARCH REFERENCES

ALR. Construction and operation of Uniform Child Custody Jurisdiction and Enforcement Act. 100 A.L.R.5th 1.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction

Provision. 57 A.L.R.6th 163.

Inconvenience of Forum as Ground for Declining Jurisdiction Under § 207 of Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA]. 35 A.L.R.7th Art. 7 (2018).

CASE NOTES

ANALYSIS

Child-Custody Proceeding.
Home State.
Initial Determination.
Person Acting As a Parent.
Tribe.

Child-Custody Proceeding.

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of § 9-19-204(b) applied, and Arkansas then became the home state of the children. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Home State.

Under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., the trial court had jurisdiction where the children had not lived with their mother in any state for six consecutive months immediately before the child-custody proceeding commenced and were living with their father in Arkansas at the time those proceedings commenced. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Trial court erred in assuming jurisdiction over the child-custody determinations where Arkansas was not the home state of the child and Arkansas could not acquire jurisdiction under § 9-19-201(a)(1); the child had no connections to Arkansas, only to California. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the

Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

Father's contempt citation based on an alleged deprivation of visitation was dismissed as, pursuant to 28 U.S.C. § 1738A(b)(4) and this section, Missouri was the child's "home state" due to the fact that the child had resided there for more than 5 years with the mother; thus, Arkansas was an inconvenient forum for deciding issues relating to visitation and an adoption. *Wilson v. Beckett*, 95 Ark. App. 300, 236 S.W.3d 527 (2006).

Trial court lacked subject matter jurisdiction when it entered an initial child-custody order because the order was not consistent with § 9-19-201; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008).

Circuit court had jurisdiction over the parties' children because Arkansas was the home state of the children as they had lived with appellee in Arkansas since October 2011, only being absent from the state temporarily during appellee's stay in Minnesota for employer-mandated counseling, and it could not be said that Arkansas did not have significant connections to the children or that Arizona had more significant contacts. *Adams v. Adams*, 2014 Ark. App. 67, 432 S.W.3d 49 (2014).

Arkansas court had subject-matter jurisdiction to terminate a father's parental

rights because (1) the court had jurisdiction to enter an emergency custody order under § 9-19-204, and (2) there was no evidence of a prior child-custody determination or proceeding filed in a state with jurisdiction. A guardianship proceeding commenced in Mississippi was not commenced in a court of a state having jurisdiction, as the children had been in Arkansas for over a year when that proceeding was filed; thus, Mississippi was not the children's home state, § 9-19-204(b) applied, and Arkansas became the children's home state before the termination proceeding began. *Terrell v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 582, 474 S.W.3d 90 (2015).

Trial court did not err by determining that Arkansas was the children's home state, and therefore the order adjudicating the two children dependent-neglected was affirmed, because there was testimony that the family slept, kept clothing, food, and home supplies, and had bathing facilities in Arkansas, and that one child's father and the mother's adult daughter lived in Arkansas. *Gill v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 284, 601 S.W.3d 458 (2020).

Initial Determination.

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, and that determination was entitled to full faith and credit until it was

set aside or modified by the Texas court. The Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. *Ullrich v. Walsh*, 2010 Ark. App. 290, 373 S.W.3d 413 (2010).

Person Acting As a Parent.

In a child custody dispute, the great-uncle and great-aunt met the definition of "person acting as a parent" under this section and § 9-19-202 where the child had resided with them in Mississippi for well over six months and they had asserted a custody right in the Arkansas circuit court. *Kyle v. State*, 2019 Ark. App. 491, 588 S.W.3d 754 (2019).

Tribe.

Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. § 1901 et seq., did not apply to the adoption of the minor child because she was not an "Indian child" as defined in 25 U.S.C. § 1903(4), § 9-19-104(a) did not apply to grant Indian child status to the minor child. *Vick v. Cecil (In re A.M.C.)*, 368 Ark. 369, 246 S.W.3d 426 (2007).

Cited: *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-103. Proceedings governed by other law.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

History. Acts 1999, No. 668, § 103.

9-19-104. Application to Indian tribes.

(a) A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying subchapters 1 and 2 of this chapter.

(c) A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.

History. Acts 1999, No. 668, § 104.

RESEARCH REFERENCES

<p>ALR. Construction and Application by State Courts of Indian Child Welfare Act of 1978 Requirement of Active Efforts to Provide Remedial Services, 25 U.S.C. § 1912(d). 61 A.L.R.6th 521.</p> <p>Validity, Construction, and Application of Placement Preferences of State and Federal Indian Child Welfare Acts. 63 A.L.R.6th 429.</p> <p>Who Are “Qualified Expert Witnesses”</p>	<p>Under Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912(e), (f) and State ICWA Statutes, Requiring Certain Testimony by Such Witnesses Before Foster Care Placement or Termination of Parental Rights May Be Ordered. 38 A.L.R.7th Art. 1 (2019).</p> <p>Uniform Child Custody Jurisdiction and Enforcement Act’s Application to Tribal Courts. 45 A.L.R.7th Art. 5 (2019).</p>
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CASE NOTES

<p>Applicability.</p> <p>Because the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. § 1901 et seq., did not apply to the adoption of the minor child because she was not an “Indian</p>	<p>child” as defined in 25 U.S.C. § 1903(4), subsection (a) of this section did not apply to grant Indian child status to the minor child. <i>Vick v. Cecil (In re A.M.C.)</i>, 368 Ark. 369, 246 S.W.3d 426 (2007).</p>
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9-19-105. Internal application of chapter.

- (a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying subchapters 1 and 2 of this chapter.
- (b) Except as otherwise provided in subsection (c) of this section, a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.
- (c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

History. Acts 1999, No. 668, § 105.

RESEARCH REFERENCES

<p>ALR. Applicability and Application of Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to Interna-</p>	<p>tional Child Custody and Support Actions. 66 A.L.R.6th 269.</p>
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9-19-106. Effect of child-custody determination.

A child-custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with § 9-19-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

History. Acts 1999, No. 668, § 106.

9-19-107. Priority.

If a question of existence or exercise of jurisdiction under this chapter is raised in a child-custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

History. Acts 1999, No. 668, § 107.

9-19-108. Notice to persons outside state.

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

History. Acts 1999, No. 668, § 108.

9-19-109. Appearance and limited immunity.

(a) A party to a child-custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child-custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in

a proceeding under this chapter committed by an individual while present in this state.

History. Acts 1999, No. 668, § 109.

9-19-110. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

History. Acts 1999, No. 668, § 110.

9-19-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

History. Acts 1999, No. 668, § 111.

9-19-112. Cooperation between courts — Preservation of records.

(a) A court of this state may request the appropriate court of another state to:

(1) hold an evidentiary hearing;

(2) order a person to produce or give evidence pursuant to procedures of that state;

(3) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) order a party to a child-custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

History. Acts 1999, No. 668, § 112.

SUBCHAPTER 2 — JURISDICTION

SECTION.	SECTION.
9-19-201. Initial child-custody jurisdiction.	9-19-206. Simultaneous proceedings.
9-19-202. Exclusive, continuing jurisdiction.	9-19-207. Inconvenient forum.
9-19-203. Jurisdiction to modify determination.	9-19-208. Jurisdiction declined by reason of conduct.
9-19-204. Temporary emergency jurisdiction.	9-19-209. Information to be submitted to court.
9-19-205. Notice — Opportunity to be heard — Joinder.	9-19-210. Appearance of parties and child.

9-19-201. Initial child-custody jurisdiction.

(a) Except as otherwise provided in § 9-19-204, a court of this state has jurisdiction to make an initial child-custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child

within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under § 9-19-207 or § 9-19-208, and:

(A) the child and the child's parents, or the child and at least one

(1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under § 9-19-207 or § 9-19-208; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (2), or (3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

History. Acts 1999, No. 668, § 201.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59

A.L.R.6th 161.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

Inconvenience of Forum as Ground for Declining Jurisdiction Under § 207 of Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA]. 35 A.L.R.7th Art. 7 (2018).

CASE NOTES

ANALYSIS

Home State.
Jurisdiction.

Home State.

Pursuant to subdivision (a)(4) of this section, the trial court had jurisdiction where the children had not lived with

their mother in any state for six consecutive months immediately before the child-custody proceeding commenced and were living with their father in Arkansas at the time those proceedings commenced. *Dorothy v. Dorothy*, 88 Ark. App. 358, 199 S.W.3d 107 (2004).

Court acted correctly when it continued to exercise subject-matter jurisdiction in a

termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of § 9-19-204(b) applied, and Arkansas then became the home state of the children. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Circuit court had jurisdiction over the parties' children because Arkansas was the home state of the children as they had lived with appellee in Arkansas since October 2011, only being absent from the state temporarily during appellee's stay in Minnesota for employer-mandated counseling, and it could not be said that Arkansas did not have significant connections to the children or that Arizona had more significant contacts. *Adams v. Adams*, 2014 Ark. App. 67, 432 S.W.3d 49 (2014).

Trial court did not err by determining that Arkansas was the children's home state, and therefore the order adjudicating the two children dependent-neglected was affirmed, because there was testimony that the family slept, kept clothing, food, and home supplies, and had bathing facilities in Arkansas, and that one child's father and the mother's adult daughter lived in Arkansas. *Gill v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 284, 601 S.W.3d 458 (2020).

Jurisdiction.

Trial court erred in taking jurisdiction pursuant to Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., and awarding custody of a minor child to her father where the only state with which the child had "significant" connections was California; the minor child had been born there, lived in California for over half of her life (except for two brief moves out of state), and lived in California at the time of the hearing. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

Trial court erred in assuming jurisdiction over the child-custody determinations where, under § 9-19-102, Arkansas was not the home state of the child and Arkansas could not acquire jurisdiction under subdivision (a)(1) of this section; the child had no connections to Arkansas, only to California. *Weesner v. Johnson*, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

Trial court lacked subject matter jurisdiction when it entered an initial child-

custody order because the order was not consistent with this section; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008).

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court. The Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. *Ullrich v. Walsh*, 2010 Ark. App. 290, 373 S.W.3d 413 (2010).

Trial court had subject-matter jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, §§ 9-19-101 to 9-19-401, to change custody, because the children maintained significant Arkansas connections, coming there for visitation, having their own rooms at the legal father's house and having friends over. *Lowder v. Gregory*, 2014 Ark. App. 704, 451 S.W.3d 220 (2014).

Arkansas court had subject-matter jurisdiction to terminate a father's parental rights because (1) the court had jurisdiction to enter an emergency custody order under § 9-19-204, and (2) there was no evidence of a prior child-custody determination or proceeding filed in a state with jurisdiction. A guardianship proceeding commenced in Mississippi was not commenced in a court of a state having jurisdiction, as the children had been in Arkansas for over a year when that proceeding was filed; thus, Mississippi was not the children's home state, § 9-19-204(b) applied, and Arkansas became the children's home state before the termination pro-

ceeding began. *Terrell v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 582, 474 S.W.3d 90 (2015).

Cited: Ark. Dep't of Human Servs. v.

Cox, 349 Ark. 205, 82 S.W.3d 806 (2002); *West v. West*, 362 Ark. 456, 208 S.W.3d 776 (2005); *Newkirk v. Burton*, 2015 Ark. App. 627, 475 S.W.3d 573 (2015).

9-19-202. Exclusive, continuing jurisdiction.

(a) Except as otherwise provided in § 9-19-204, a court of this state which has made a child-custody determination consistent with § 9-19-201 or § 9-19-203 has exclusive, continuing jurisdiction over the determination until:

(1) a court of this state determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(2) a court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 9-19-201.

History. Acts 1999, No. 668, § 202.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

Construction and Application of Uni-

form Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — Other Than No Significant Connection/Substantial Evidence. 60 A.L.R.6th 193.

Inconvenience of Forum as Ground for Declining Jurisdiction Under § 207 of Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA]. 35 A.L.R.7th Art. 7 (2018).

CASE NOTES

Jurisdiction.

In the context of personal jurisdiction in a child custody or guardianship case, personal jurisdiction over a party requires the appellate court to consider whether Arkansas remains the "home state" as defined by the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.; because such an analysis necessarily turns upon some fact to be determined by the trial court, a writ of prohibition is not the proper remedy to

determine the issue, and the related issue of the trial court's continuing jurisdiction under this section also involves a similar factual determination. *Finney v. Cook*, 351 Ark. 367, 94 S.W.3d 333 (2002).

Although mother lived in Oregon with her children, the Arkansas court had continuing jurisdiction of child custody matters because the children had a significant connection with Arkansas in that their father and multiple relatives resided in Arkansas and the children spent at least

20 percent of their time there; further, the mother's argument that findings in relation to subdivision (a)(1) of this section should not be based solely upon court-ordered visitation was meritless. *West v. West*, 364 Ark. 73, 216 S.W.3d 557 (2005).

Father's contempt citation based on an alleged deprivation of visitation was dismissed as, pursuant to 28 U.S.C. § 1738A(b)(4) and § 9-19-102(7), Missouri was the child's "home state" due to the fact that the child had resided there for more than 5 years with the mother; thus, Arkansas was an inconvenient forum for deciding issues relating to visitation and an adoption. *Wilson v. Beckett*, 95 Ark. App. 300, 236 S.W.3d 527 (2006).

Trial court did not err when it determined that it had jurisdiction under this section to hear father's motion to change custody; the trial court's prior orders stated that it retained jurisdiction and there was sufficient contacts with Arkansas, despite the fact that the mother and children resided in the United Kingdom. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).

Once it is determined that a significant connection remains, it is unnecessary under subsection (a) of this section to also determine whether there is substantial evidence available in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

Because the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, had to be considered, a trial court did not err by determining that it had exclusive, continuing jurisdiction over a custody case after a child moved to Oklahoma due to the child's continuing contacts with Arkansas under subsection (a) of this section. The child's father and his family resided in Arkansas, visitation rights were exercised there, the child had friends there, and she attended church and vacation bible school in Arkansas. *Thomas v. Avant*, 370 Ark. 377, 260 S.W.3d 266 (2007).

Trial court's judgment modifying visitation was reversed because the trial court was wrong as a matter of law that it was required to retain jurisdiction based solely upon one parent's continued residence in the state, and applying that mistaken premise, the trial court erred when it failed to exercise its discretion to determine whether it should exercise, or de-

cline to exercise, jurisdiction under the UCCJEA, subsection (a) of this section. *Gullahorn v. Gullahorn*, 99 Ark. App. 397, 260 S.W.3d 744 (2007).

Trial court lacked subject matter jurisdiction when it entered an initial child-custody order because the order was not consistent with § 9-19-201; Arkansas was not the home state of a minor child because she was not born there and had never been there. Moreover, the home state had not declined to exercise jurisdiction. *Czupil v. Jernigan*, 103 Ark. App. 132, 286 S.W.3d 753 (2008).

Trial court did not abuse its discretion in retaining jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., where a father and the child had a significant connection with the state of Arkansas and the trial court had continuing, exclusive jurisdiction under subsection (a) of this section. The child had lived in Texas for only one year, the father had remained a resident of Arkansas, and the child had continued to come to Arkansas on a regular basis to visit with the father. *Hatfield v. Miller*, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

Because a circuit court awarded child custody when it entered a divorce decree, it had exclusive, continuing jurisdiction over the custody determination until it made either of the two determinations set forth in the Uniform Child-Custody Jurisdiction and Enforcement Act, subsection (a) of this section; there was evidence of significant connections with Arkansas when the circuit court determined that it had jurisdiction to decide the father's motion to change custody, and subsection (a) required no additional determination of the availability of substantial evidence. *Harris v. Harris*, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Where a mother relocated to Montana with the parties' child, as the child had lived in Arkansas for all but the last nine months of her life, had extended family in Arkansas, and had regular visitation with her father there, the Arkansas trial court that had issued the initial custody decree did not abuse its discretion by exercising its continuing, exclusive jurisdiction under subsection (a) of this section over the father's motion to modify custody. *Shields v. Kimble*, 2010 Ark. App. 479, 375 S.W.3d 738 (2010).

In a child custody dispute, the circuit court had lost jurisdiction under this section where the child had resided in Mississippi for at least four years with the paternal great-uncle and great-aunt, a Mississippi court had granted them emer-

gency custody, and that action constituted an award of legal custody by a court. *Kyle v. State*, 2019 Ark. App. 491, 588 S.W.3d 754 (2019).

Cited: *Newkirk v. Burton*, 2015 Ark. App. 627, 475 S.W.3d 573 (2015).

9-19-203. Jurisdiction to modify determination.

Except as otherwise provided in § 9-19-204, a court of this state may not modify a child-custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under § 9-19-201(a)(1) or (2) and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under § 9-19-202 or that a court of this state would be a more convenient forum under § 9-19-207; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

History. Acts 1999, No. 668, § 203.

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Child Custody Jurisdiction and Enforcement Act's Significant Connection Jurisdiction Provision. 52 A.L.R.6th 433.

Construction and Application of Uni-

form Child Custody Jurisdiction and Enforcement Act's Exclusive, Continuing Jurisdiction Provision — No Significant Connection/Substantial Evidence. 59 A.L.R.6th 161.

CASE NOTES

ANALYSIS

Guardianship.
Specific Cases.

Guardianship.

Circuit court had jurisdiction, pursuant to this section, to determine matters involving the child's care, custody, and control and to determine both temporary and permanent guardianship because (1) Arkansas was the child's home state; (2) neither the child, the mother, nor the grandparents had a significant connection to California, where the original custody decision was made; (3) there was no substantial evidence in California concerning the child's care, protection, training, and personal relationships; and (4) the California court declined to exercise continuing jurisdiction. *Devine v. Martens*, 371 Ark. 60, 263 S.W.3d 515 (2007), overruled in part on other grounds, *Fletcher v.*

Scorza, 2010 Ark. 64, 359 S.W.3d 413 (2010).

Specific Cases.

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, and that determination was entitled to full faith and credit until it was

set aside or modified by the Texas court. The Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdic-

tion of the father's petition for paternity and emergency custody. *Ullrich v. Walsh*, 2010 Ark. App. 290, 373 S.W.3d 413 (2010).

Trial court did not have jurisdiction to modify the parties' visitation arrangement set forth in a Hawaii decree because there was no evidence on the record that the requirements of this section were met; the changes in the case were not ministerial. *Townsend v. Townsend*, 2018 Ark. App. 246 (2018).

9-19-204. Temporary emergency jurisdiction.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child-custody determination that is entitled to be enforced under this chapter, and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, a child-custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child-custody determination that is entitled to be enforced under this chapter, or a child-custody proceeding has been commenced in a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under §§ 9-19-201 — 9-19-203. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child-custody determination under this section, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of a state having jurisdiction under §§ 9-19-201 — 9-19-203, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to §§ 9-19-201 — 9-19-203, upon being informed that a child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the

parties and the child, and determine a period for the duration of the temporary order.

History. Acts 1999, No. 668, § 204.

RESEARCH REFERENCES

ALR. Construction and Application of Enforcement Act's Temporary Emergency Uniform Child Custody Jurisdiction and Jurisdiction Provision. 53 A.L.R.6th 419.

CASE NOTES

ANALYSIS

Applicability.

Failure to Engage in Home-State Analysis.

Jurisdiction Proper.

Applicability.

In a case where an Oklahoma child was left unattended in a car in Arkansas by his mother, a trial court had the authority to enter an order granting custody to the paternal grandparents because the child was placed in an emergency situation in Arkansas within the meaning of this section. Ark. Dep't of Health & Human Servs. v. Jones, 97 Ark. App. 267, 248 S.W.3d 507 (2007).

Failure to Engage in Home-State Analysis.

Circuit court erred in dismissing a petition for dependency-neglect for lack of subject-matter jurisdiction because the court made no findings regarding the connection that a mother and her children had with Arkansas and the children's care, protection, training, and personal relationships and it also relied on an incorrect assumption of law in its decision to decline jurisdiction. Ark. Dep't of Human Servs. v. Waugh, 2015 Ark. App. 155, 457 S.W.3d 286 (2015).

Jurisdiction Proper.

In a guardianship case, there was no dispute that the child was present in Arkansas; also, the circuit court found that the child had been abandoned and that an emergency existed which created an imminent danger to the safety and health of the child. Thus, an emergency existed forming the basis for the circuit court's jurisdiction under this section. Devine v. Martens, 371 Ark. 60, 263 S.W.3d 515

(2007), overruled in part on other grounds, Fletcher v. Scorza, 2010 Ark. 64, 359 S.W.3d 413 (2010).

In a guardianship case, the circuit court concluded that it had jurisdiction for the purpose of determining matters of the child's custody, and granted emergency temporary guardianship to the grandparents pursuant to § 28-65-218; the circuit court reasoned that an emergency existed because (1) the mother's lifestyle created a risk of imminent danger to the child's life or health; and (2) the mother had abandoned care of the child on a number of occasions during her lifetime, and left the child most recently with his grandparents. Thus, pursuant to this section, the circuit court did not clearly err in finding that an emergency existed that warranted the circuit court's exercise of jurisdiction over the temporary emergency guardianship petition. Devine v. Martens, 371 Ark. 60, 263 S.W.3d 515 (2007), overruled in part on other grounds, Fletcher v. Scorza, 2010 Ark. 64, 359 S.W.3d 413 (2010).

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of subsection (a) of this section applied, and Arkansas then became the home state of the children. Davis v. Ark. Dep't of Health & Human Servs., 98 Ark. App. 275, 254 S.W.3d 762 (2007).

Arkansas court had subject-matter jurisdiction to terminate a father's parental rights because (1) the court had jurisdiction to enter an emergency custody order under this section, and (2) there was no evidence of a prior child-custody determination or proceeding filed in a state with

jurisdiction. A guardianship proceeding commenced in Mississippi was not commenced in a court of a state having jurisdiction, as the children had been in Arkansas for over a year when that proceeding was filed; thus, Mississippi was not the children's home state, subsection (b) of

this section applied, and Arkansas became the children's home state before the termination proceeding began. *Terrell v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 582, 474 S.W.3d 90 (2015).

Cited: *Smith v. Murphy*, 2017 Ark. App. 188, 517 S.W.3d 453 (2017).

9-19-205. Notice — Opportunity to be heard — Joinder.

(a) Before a child-custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of § 9-19-108 must be given to all persons entitled to notice under the law of this state as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child-custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child-custody proceeding under this chapter are governed by the law of this state as in child-custody proceedings between residents of this state.

History. Acts 1999, No. 668, § 205.

CASE NOTES

Cited: *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-206. Simultaneous proceedings.

(a) Except as otherwise provided in § 9-19-204, a court of this state may not exercise its jurisdiction under this subchapter if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under § 9-19-207.

(b) Except as otherwise provided in § 9-19-204, a court of this state, before hearing a child-custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 9-19-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child-custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child-custody determination has been commenced in another state, the court may:

(1) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) enjoin the parties from continuing with the proceeding for enforcement; or

(3) proceed with the modification under conditions it considers appropriate.

History. Acts 1999, No. 668, § 206.

CASE NOTES

Specific Cases.

While matters concerning the modification of child custody were pending in the courts of Louisiana and Arkansas, the Arkansas court acted properly in staying its proceedings and allowing the Louisiana court to dismiss its matter, based on a finding that Arkansas was the children's home state; later, the Arkansas court properly found that it had jurisdiction and that the children had lived in Arkansas for more than six months. *Bridges v. Bridges*, 93 Ark. App. 358, 219 S.W.3d 699 (2005).

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court. The Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody

determination and that it did not abuse its discretion in refusing to assume jurisdiction of the father's petition for paternity and emergency custody. *Ullrich v. Walsh*, 2010 Ark. App. 290, 373 S.W.3d 413 (2010).

Arkansas circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under § 9-19-207(b) as a previous child custody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. *Casas-Cordero v. Mira*, 2012 Ark. App. 457 (2012).

Circuit court did not err in exercising jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., where the father failed to object to the circumstances of an Arkansas court's communication with a California court regarding its decision to decline jurisdiction, and he had acquiesced in the manner in which the Arkansas court made a record of its previous communication with the California court. *Doughty v. Douglas*, 2017 Ark. App. 445, 527 S.W.3d 732 (2017).

Cited: Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-207. Inconvenient forum.

(a) A court of this state which has jurisdiction under this chapter to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum

under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) the length of time the child has resided outside this state;

(3) the distance between the court in this state and the court in the state that would assume jurisdiction;

(4) the relative financial circumstances of the parties;

(5) any agreement of the parties as to which state should assume jurisdiction;

(6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) the familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

History. Acts 1999, No. 668, § 207.

RESEARCH REFERENCES

ALR. Inconvenience of Forum as Ground for Declining Jurisdiction Under § 207 of Uniform Child Custody Jurisdiction and Enforcement Act [UCCJEA]. 35 A.L.R.7th Art. 7 (2018).

CASE NOTES

ANALYSIS

In General.
Specific Cases.

In General.

Because a circuit court awarded child custody when it entered a divorce decree,

it had exclusive, continuing jurisdiction over the custody determination until it made either of the two determinations set forth in the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), § 9-19-202(a); the language of the UCCJEA, subsection (a) of this section, clearly indicates that the court with juris-

diction has discretion to decide whether it should decline to exercise this discretion when there is another appropriate forum. *Harris v. Harris*, 2010 Ark. App. 160, 379 S.W.3d 8 (2010).

Specific Cases.

Arkansas was not an inconvenient forum despite the fact that the mother and children had not resided in Arkansas for over five years as the mother provided no evidence to show that a court in the United Kingdom would have been an appropriate forum; despite the fact that the issue was moot since the mother retained custody, the issue was heard since it was capable of repetition, yet evading review. *Uttley v. Bobo*, 97 Ark. App. 15, 242 S.W.3d 638 (2006).

Arkansas was not an inconvenient forum despite the fact that the mother resided in Texas where the child had lived in Texas for only one year, the father had remained a resident of Arkansas, the child had continued to come to Arkansas on a regular basis to visit with the father, and the Arkansas trial court was familiar with the case because it had made the initial custody determination and had taken testimony and entered a temporary custody order just weeks earlier. *Hatfield v. Miller*, 2009 Ark. App. 832, 373 S.W.3d 366 (2009).

Circuit court did not err in finding that a Texas court had jurisdiction over a mother and a father because the Texas court had already made an initial child-custody determination under the Uniform Child-Custody Jurisdiction and Enforcement Act, and that determination was entitled to full faith and credit until it was set aside or modified by the Texas court. The Texas order provided for the legal custody, physical custody, and visitation of the child and recited that no other court had continuing, exclusive jurisdiction of the case, and the trial court's letter opinion stating its findings of fact and conclusions of law showed that it made a reasoned decision finding that the Texas court's order was an initial child-custody determination and that it did not abuse its discretion in refusing to assume jurisdic-

tion of the father's petition for paternity and emergency custody. *Ullrich v. Walsh*, 2010 Ark. App. 290, 373 S.W.3d 413 (2010).

Where a child had lived in Montana with her mother for only nine months before her father filed a petition for modification of custody, as the father remained a resident of Arkansas, and the Arkansas trial court found that the child had continued to come to Arkansas on a regular basis to visit with him, the court did not abuse its discretion by not declining jurisdiction in favor of Montana under subsection (a) of this section. *Shields v. Kimble*, 2010 Ark. App. 479, 375 S.W.3d 738 (2010).

Arkansas circuit court did not err in declining to exercise jurisdiction over a child custody matter because California was a more appropriate forum under subsection (b) of this section as a previous child custody determination was made there and allegations were made that the child had been removed to California to prevent abuse by appellant mother. *Casas-Cordero v. Mira*, 2012 Ark. App. 457 (2012).

Trial court did not err in sua sponte dismissing a wife's petition for registration and enforcement of an out-of-state divorce decree where the issue decided was an inconvenient forum, and under subsection (a) of this section, the trial court had the authority to dismiss the petition on its own motion. *Harter v. Szykowny*, 2014 Ark. App. 701, 451 S.W.3d 215 (2014).

Circuit court did not abuse its discretion in declining to exercise jurisdiction over an adoption petition because the court determined that it was an inconvenient forum under the circumstances and that a court of Mississippi was a more appropriate forum. The guardians, who petitioned a court in Mississippi to terminate parental rights and to adopt the child, lived in Mississippi with the child for two years, and all of the evidence concerning the child's care, education, protection, health, and personal relationships was in Mississippi. *Newkirk v. Burton*, 2015 Ark. App. 627, 475 S.W.3d 573 (2015).

9-19-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in § 9-19-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

(1) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) a court of the state otherwise having jurisdiction under §§ 9-19-201 — 9-19-203 determines that this state is a more appropriate forum under § 9-19-207; or

(3) no court of any other state would have jurisdiction under the criteria specified in §§ 9-19-201 — 9-19-203.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody proceeding is commenced in a court having jurisdiction under §§ 9-19-201 — 9-19-203.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this chapter.

History. Acts 1999, No. 668, § 208.

RESEARCH REFERENCES

ALR. Construction and Operation of Uniform Child Custody Jurisdiction and Enforcement Act. 100 A.L.R.5th 1.

Construction and Application of Uni-

form Child Custody Jurisdiction and Enforcement Act's Home State Jurisdiction Provision. 57 A.L.R.6th 163.

CASE NOTES**Specific Cases.**

Appellate court was unable to say that the circuit court abused its discretion in exercising jurisdiction in a custody matter; although a court of this state should decline jurisdiction if its jurisdiction has been invoked by a person who has en-

gaged in unjustifiable conduct, it is not required to do so under this section if, among other things, no court of any other state would have jurisdiction. *Doughty v. Douglas*, 2017 Ark. App. 445, 527 S.W.3d 732 (2017).

9-19-209. Information to be submitted to court.

(a) In a child-custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child-custody determination, if any;

(2) knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivisions (a)(1)-(3) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

History. Acts 1999, No. 668, § 209.

CASE NOTES**Jurisdiction Proper.**

Court acted correctly when it continued to exercise subject-matter jurisdiction in a termination of parental rights case, and

such jurisdiction existed when the termination order was entered. In the absence of any competing custody order or petition in Louisiana, the provisions of § 9-19-

204(b) applied, and Arkansas then became the home state of the children. *Davis v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 275, 254 S.W.3d 762 (2007). **Cited:** *Ark. Dep't of Human Servs. v. Cox*, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-210. Appearance of parties and child.

(a) In a child-custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child-custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to § 9-19-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child-custody proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

History. Acts 1999, No. 668, § 210.

SUBCHAPTER 3 — ENFORCEMENT

SECTION.	SECTION.
9-19-301. Definitions.	9-19-309. Service of petition and orders.
9-19-302. Enforcement under Hague Convention.	9-19-310. Hearing and order.
9-19-303. Duty to enforce.	9-19-311. Warrant to take physical custody of child.
9-19-304. Temporary visitation.	9-19-312. Costs, fees, and expenses.
9-19-305. Registration of child-custody determination.	9-19-313. Recognition and enforcement.
9-19-306. Enforcement of registered determination.	9-19-314. Appeals.
9-19-307. Simultaneous proceedings.	9-19-315. Role of prosecutor or public official.
9-19-308. Expedited enforcement of child-custody determination.	9-19-316. Role of law enforcement.
	9-19-317. Costs and expenses.

9-19-301. Definitions.

In this subchapter:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under

the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination.

History. Acts 1999, No. 668, § 301.

9-19-302. Enforcement under Hague Convention.

Under this subchapter a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child-custody determination.

History. Acts 1999, No. 668, § 302.

9-19-303. Duty to enforce.

(a) A court of this state shall recognize and enforce a child-custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(b) A court of this state may utilize any remedy available under other law of this state to enforce a child-custody determination made by a court of another state. The remedies provided in this subchapter are cumulative and do not affect the availability of other remedies to enforce a child-custody determination.

History. Acts 1999, No. 668, § 303.

CASE NOTES

ANALYSIS

**Criminal Interference with Custody.
Specific Cases.**

Criminal Interference with Custody.

Defendant was properly convicted of interference with custody under § 5-26-502 for not returning his children to his ex-wife pursuant to a Pennsylvania custody order; the fact that the order had not yet been registered in Arkansas for 10 days under § 9-19-305 did not bar a criminal prosecution, as that requirement only applied in a civil enforcement action. Subsection (b) of this section and § 9-19-315 further supported this result. *Longeway v. State*, 2018 Ark. App. 356, 553 S.W.3d 180 (2018).

Specific Cases.

Because a wife's petition did not seek to change custody, but rather merely to reg-

ister and enforce an existing out-of-state divorce decree, subchapter 3 was the only portion of the Arkansas Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., that was invoked by her petition and thus, the trial court should have registered the out-of-state decree in Arkansas. *Harter v. Szykowny*, 2014 Ark. App. 701, 451 S.W.3d 215 (2014).

Although the trial court had enforcement authority, it did not have jurisdiction to modify the parties' visitation arrangement set forth in a Hawaii decree because there was no evidence on the record that the requirements of § 9-19-203 were met and the changes requested were not ministerial. *Townsend v. Townsend*, 2018 Ark. App. 246 (2018).

9-19-304. Temporary visitation.

(a) A court of this state which does not have jurisdiction to modify a child-custody determination, may issue a temporary order enforcing:

- (1) a visitation schedule made by a court of another state; or
- (2) the visitation provisions of a child-custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (a)(2) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in subchapter 2 of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

History. Acts 1999, No. 668, § 304.

9-19-305. Registration of child-custody determination.

(a) A child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate circuit court in this state:

- (1) a letter or other document requesting registration;
- (2) two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and
- (3) except as otherwise provided in § 9-19-209, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child-custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

- (1) cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and
- (2) serve notice upon the persons named pursuant to subdivision (a)(3) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision (b)(2) of this section must state that:

- (1) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
- (2) a hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and
- (3) failure to contest the registration will result in confirmation of the child-custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(2) the child-custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter; or

(3) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History. Acts 1999, No. 668, § 305.

CASE NOTES

ANALYSIS

Construction With Other Law.
Deficiencies in Notice.
Registration.

Construction With Other Law.

Defendant was properly convicted of interference with custody under § 5-26-502 for not returning his children to his ex-wife pursuant to a Pennsylvania custody order; the fact that the order had not yet been registered in Arkansas for 10 days under this section did not bar a criminal prosecution, as that requirement only applied in a civil enforcement action. Sections 9-19-303(b) and 9-19-315 further supported this result. *Longeway v. State*, 2018 Ark. App. 356, 553 S.W.3d 180 (2018).

Deficiencies in Notice.

Trial court did not err in finding that a father substantially complied with the notice provisions of this section as the mother received notice of the hearing on registration of the foreign child custody judgment, filed a motion to dismiss, and

appeared before the trial court to argue her motion. Thus, any technical errors involving the number of copies attached to the petition, the lack of a statement that the order had not been modified, the lack of the father's name and address, and the failure of the notice of the hearing to include statements regarding the mother's right to contest the registration of the order at a hearing did not prejudice the mother's ability to present her case. *Piccioni v. Piccioni*, 2011 Ark. App. 256 (2011).

Registration.

Because a wife's petition did not seek to change custody, but rather merely to register and enforce an existing out-of-state divorce decree, subchapter 3 was the only portion of the Arkansas Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., that was invoked by her petition and thus, the trial court should have registered the out-of-state decree in Arkansas. *Harter v. Szykowny*, 2014 Ark. App. 701, 451 S.W.3d 215 (2014).

Cited: Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-306. Enforcement of registered determination.

(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child-custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with subchapter 2 of this chapter, a registered child-custody determination of a court of another state.

History. Acts 1999, No. 668, § 306.

CASE NOTES

Cited: Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-307. Simultaneous proceedings.

If a proceeding for enforcement under this subchapter is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under subchapter 2 of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

History. Acts 1999, No. 668, § 307.

9-19-308. Expedited enforcement of child-custody determination.

(a) A petition under this subchapter must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child-custody determination must state:

(1) whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number, and the nature of the proceeding;

(3) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) the present physical address of the child and the respondent, if known;

(5) whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) if the child-custody determination has been registered and confirmed under § 9-19-305, the date and place of registration.

(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 9-19-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) the child-custody determination has not been registered and confirmed under § 9-19-305 and that:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter;

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under § 9-19-304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

History. Acts 1999, No. 668, § 308.

9-19-309. Service of petition and orders.

Except as otherwise provided in § 9-19-311, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

History. Acts 1999, No. 668, § 309.

9-19-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to § 9-19-204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) the child-custody determination has not been registered and confirmed under § 9-19-305 and that:

(A) the issuing court did not have jurisdiction under subchapter 2 of this chapter;

(B) the child-custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter; or

(C) the respondent was entitled to notice, but notice was not given in accordance with the standards of § 9-19-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) the child-custody determination for which enforcement is sought was registered and confirmed under § 9-19-305 but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under subchapter 2 of this chapter.

(b) The court shall award the fees, costs, and expenses authorized under § 9-19-312 and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this subchapter.

History. Acts 1999, No. 668, § 310.

9-19-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

The application for the warrant must include the statements required by § 9-19-308(b).

(c) A warrant to take physical custody of a child must:

(1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) direct law enforcement officers to take physical custody of the child immediately; and

(3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

History. Acts 1999, No. 668, § 311.

9-19-312. Costs, fees, and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

History. Acts 1999, No. 668, § 312.

9-19-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this chapter which enforces a child-custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under subchapter 2 of this chapter.

History. Acts 1999, No. 668, § 313.

9-19-314. Appeals.

An appeal may be taken from a final order in a proceeding under this subchapter in accordance with the Supreme Court Rules of Appellate

Procedure. Unless the court enters a temporary emergency order under § 9-19-204, the enforcing court may not stay an order enforcing a child-custody determination pending appeal.

History. Acts 1999, No. 668, § 314.

9-19-315. Role of prosecutor or public official.

(a) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecuting attorney may take any lawful action, including resort to a proceeding under this subchapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

- (1) an existing child-custody determination;
- (2) a request to do so from a court in a pending child-custody proceeding;
- (3) a reasonable belief that a criminal statute has been violated; or
- (4) a reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecuting attorney acting under this section acts on behalf of the court and may not represent any party.

History. Acts 1999, No. 668, § 315.

CASE NOTES

Criminal Interference with Custody.

Defendant was properly convicted of interference with custody under § 5-26-502 for not returning his children to his ex-wife pursuant to a Pennsylvania custody order; the fact that the order had not yet been registered in Arkansas for 10

days under § 9-19-305 did not bar a criminal prosecution, as that requirement only applied in a civil enforcement action. This section and § 9-19-303(b) further supported this result. *Longeway v. State*, 2018 Ark. App. 356, 553 S.W.3d 180 (2018).

9-19-316. Role of law enforcement.

At the request of a prosecuting attorney acting under § 9-19-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecuting attorney with responsibilities under § 9-19-315.

History. Acts 1999, No. 668, § 316.

CASE NOTES

Cited: Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 (2002).

9-19-317. Costs and expenses.

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecuting attorney and law enforcement officers under § 9-19-315 or § 9-19-316.

History. Acts 1999, No. 668, § 317.

SUBCHAPTER 4 — MISCELLANEOUS PROVISIONS

SECTION.

9-19-401. Application and construction.

9-19-402 — 9-19-405. [Reserved.]

9-19-401. Application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 1999, No. 668, § 401.

CASE NOTES

Cited: Weesner v. Johnson, 89 Ark. App. 203, 201 S.W.3d 432 (2005).

9-19-402 — 9-19-405. [Reserved.]

Publisher’s Notes. These provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act were not enacted in Arkansas.

CHAPTER 20

ADULT MALTREATMENT CUSTODY ACT

SECTION.

9-20-101. Title.

9-20-102. Purpose.

9-20-103. Definitions.

9-20-104. Spiritual treatment alone not abusive.

9-20-105. Privilege not grounds for exclusion of evidence.

9-20-106. Immunity for investigation participants.

9-20-107. Reports as evidence.

9-20-108. Jurisdiction — Venue — Eligibility.

9-20-109. Commencement of proceedings.

9-20-110. Petition.

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SECTION.

9-20-112. Voluntary protective placement.

9-20-113. Evaluations.

9-20-114. Emergency custody.

9-20-115. Emergency orders.

9-20-116. Probable cause hearing.

9-20-117. Long-term custody and court-ordered protective services hearings.

9-20-118. Review hearings.

9-20-119. Assets of a maltreated adult.

9-20-120. Duties and responsibilities of custodian.

9-20-121. Availability of custody and protective services records.

SECTION.

9-20-122. Evaluation of prospective guardians.

9-20-123. Rights of relatives.

SECTION.

9-20-124. Consideration of issues requiring court approval.

9-20-101. Title.

This chapter shall be known and may be cited as the “Adult Maltreatment Custody Act”.

History. Acts 2005, No. 1811, § 1.

9-20-102. Purpose.

The purposes of this chapter are to:

(1) Protect a maltreated adult or long-term care facility resident who is in imminent danger; and

(2) Encourage the cooperation of state agencies and private providers in the service delivery system for maltreated adults.

History. Acts 2005, No. 1811, § 1.

CASE NOTES

Cited: O.C. v. Ark. Dep’t of Human Servs., 2019 Ark. App. 581, 591 S.W.3d 812 (2019).

9-20-103. Definitions.

As used in this chapter:

(1)(A) “Abuse” means with regard to any long-term care facility resident or any person who is at the Arkansas State Hospital an act by a caregiver that falls into any of the following categories:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult, excluding court-ordered medical care or medical care requested by an endangered adult, an impaired adult, or a person who is legally authorized to make a medical decision on behalf of an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm, excluding necessary care and treatment provided in accordance with generally recognized professional standards of care;

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause; or

(iv) Any willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(B) "Abuse" means with regard to any person who is not a long-term care facility resident or at the Arkansas State Hospital:

(i) Any intentional and unnecessary physical act that inflicts pain on or causes injury to an endangered adult or an impaired adult;

(ii) Any intentional act that a reasonable person would believe subjects an endangered adult or an impaired adult, regardless of age, ability to comprehend, or disability, to ridicule or psychological injury in a manner likely to provoke fear or alarm; or

(iii) Any intentional threat that a reasonable person would find credible and nonfrivolous to inflict pain on or cause injury to an endangered adult or an impaired adult except in the course of medical treatment or for justifiable cause;

(2) "Adult maltreatment" means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult;

(3) "Caregiver" means a related person or an unrelated person, an owner, an agent, a high managerial agent of a public or private organization, or a public or private organization that has the responsibility for the protection, care, or custody of an endangered adult or an impaired adult as a result of assuming the responsibility voluntarily, by contract, through employment, or by order of the circuit court;

(4) "Custodian" means the Department of Human Services while the department is exercising a seventy-two-hour hold on an endangered or impaired person or during the effective dates of an order granting custody to the department;

(5) "Department" means the Department of Human Services;

(6) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who:

(i) Is found to be in a situation or condition that poses a danger to himself or herself; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) An adult resident of a long-term care facility who:

(i) Is found to be in a situation or condition that poses an imminent risk of death or serious bodily harm to that person; and

(ii) Demonstrates a lack of capacity to comprehend the nature and consequences of remaining in that situation or condition;

(7) "Exploitation" means the:

(A) Illegal or unauthorized use or management of an endangered person's or an impaired person's funds, assets, or property;

(B) Use of an adult endangered person's or an adult impaired person's power of attorney or guardianship for the profit or advantage of one's own self or another;

(C) Fraudulent or otherwise illegal, unauthorized, or improper act or process of an individual, including a caregiver or fiduciary, that uses the resources of an endangered or an impaired person or

long-term care facility resident for monetary or personal benefit, profit, or gain or that results in depriving the person or resident of rightful access to or use of benefits, resources, belongings, or assets; or

(D) Misappropriation of property of a long-term care facility resident;

(8)(A) “Fiduciary” means a person or entity with the legal responsibility to:

(i) Make decisions on behalf of and for the benefit of another person; and

(ii) Act in good faith and with fairness.

(B) “Fiduciary” includes without limitation a trustee, a guardian, a conservator, an executor, an agent under financial power of attorney or healthcare power of attorney, or a representative payee;

(9) “Imminent danger to health or safety” means a situation in which death or serious bodily harm could reasonably be expected to occur without intervention;

(10)(A) “Impaired adult” means a person eighteen (18) years of age or older who, as a result of mental or physical impairment, is unable to protect himself or herself from abuse, sexual abuse, neglect, or exploitation.

(B) For purposes of this chapter, residents of a long-term care facility are presumed to be impaired persons.

(C) For purposes of this chapter, a person with a mental impairment does not include a person who is in need of acute psychiatric treatment, chronic mental health treatment, alcohol or drug abuse treatment, or casework supervision by mental health professionals.

(D) For purposes of this chapter, an adult who has a representative payee appointed for that adult by the Social Security Administration or other authorized agency is presumed to be an impaired adult in relation to adult maltreatment through financial exploitation;

(11) “Impairment” means a disability that grossly and chronically diminishes a person’s physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment;

(12)(A) “Less-than-custody order” means an emergency order issued by a circuit court of the State of Arkansas on petition or motion of the department that makes specific orders for the protection of an endangered or impaired adult but does not give the department custody over an endangered or impaired adult.

(B) A less-than-custody order may specify appropriate safeguards, including without limitation:

(i) Prohibiting a legal custodian or guardian of an endangered or impaired adult from having contact with the endangered or impaired adult;

(ii) Prohibiting a legal custodian, guardian, or holder of a power of attorney of an endangered or impaired adult from withdrawing funds from one (1) or more accounts of the endangered or impaired adult or

otherwise accessing the assets of the endangered or impaired adult;
or

(iii) Requiring the endangered or impaired adult to accept services as directed by the court;

(13) “Long-term care facility” means:

- (A) A nursing home;
- (B) A residential care facility;
- (C) A post-acute head injury retraining and residential facility;
- (D) An assisted living facility;
- (E) An intermediate care facility for individuals with developmental disabilities; or

(F) Any facility that provides long-term medical or personal care;

(14) “Long-term care facility resident” means a person eighteen (18) years of age or older living in a long-term care facility;

(15) “Long-term care facility resident maltreatment” means abuse, exploitation, neglect, physical abuse, or sexual abuse of an adult resident of a long-term care facility;

(16) “Maltreated adult” means an adult who has been abused, exploited, neglected, physically abused, or sexually abused;

(17) “Misappropriation of property of a long-term care facility resident” means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a long-term care facility resident’s belongings or money without the long-term care facility resident’s consent;

(18) “Neglect” means:

(A) An act or omission by an endangered or an impaired adult, for example, self-neglect; or

(B) An act or omission by a caregiver responsible for the care and supervision of an endangered or an impaired adult constituting negligent failure to:

(i) Provide necessary treatment, rehabilitation, care, food, clothing, shelter, supervision, or medical services to an endangered or an impaired adult;

(ii) Report health problems or changes in health problems or changes in the health condition of an endangered or an impaired adult to the appropriate medical personnel;

(iii) Carry out a prescribed treatment plan; or

(iv) Provide to an adult resident of a long-term care facility goods or services necessary to avoid physical harm, mental anguish, or mental illness as defined in rules promulgated by the Office of Long-Term Care;

(19)(A) “Physical injury” means the impairment of a physical condition or the infliction of substantial pain.

(B) If the person is an endangered or an impaired adult, there is a presumption that any physical injury resulted in the infliction of substantial pain;

(20)(A) “Protective services” means services to protect an endangered or an impaired adult from:

- (i) Self-neglect or self-abuse; or
- (ii) Abuse or neglect by others.
- (B) “Protective services” may include:
 - (i) Evaluation of the need for services;
 - (ii) Arrangements or referrals for appropriate services available in the community;
 - (iii) Assistance in obtaining financial benefits to which the person is entitled; or
 - (iv) As appropriate, referrals to law enforcement or prosecutors;
- (21) “Relative” means the spouse, child, grandchild, parent, or sibling of an endangered adult or an impaired adult;
- (22) “Resident of a long-term care facility” means a person eighteen (18) years of age or older living in a long-term care facility;
- (23) “Serious bodily harm” means physical abuse, sexual abuse, physical injury, or serious physical injury;
- (24) “Serious physical injury” means physical injury to an endangered or an impaired adult that:
 - (A) Creates a substantial risk of death; or
 - (B) Causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ;
- (25) “Sexual abuse” means deviate sexual activity, sexual contact, or sexual intercourse, as those terms are defined in § 5-14-101, with another person who is not the actor’s spouse and who is incapable of consent because he or she is mentally defective, mentally incapacitated, or physically helpless; and
- (26) “Subject of the report” means:
 - (A) The endangered or an impaired adult;
 - (B) The adult’s legal guardian; and
 - (C) The offender.

History. Acts 2005, No. 1811, § 1; 2007, No. 135, § 1; 2007, No. 283, § 1; 2007, No. 497, § 1; 2009, No. 526, § 1; 2011, No. 206, § 1; 2013, No. 583, § 1; 2017, No. 579, § 1; 2017, No. 667, § 1; 2019, No. 315, § 718.

A.C.R.C. Notes. As originally enacted, subdivision (9)(E) read as follows: “(E) An intermediate care facility for the mentally retarded.”

Pursuant to § 1-2-124, the Arkansas

Code Revision Commission has replaced the term “the mentally retarded” with the term “individuals with mental retardation”.

Amendments. The 2017 by No. 579 amendment added the definition for “Impairment”.

The 2017 by No. 667 amendment added the definition for “Relative”.

The 2019 amendment substituted “rules” for “regulations” in (18)(B)(iv).

RESEARCH REFERENCES

ALR. Determination of Who Is “Vulnerable Adult” Entitled to Protection Under

Adult Protection Acts. 19 A.L.R.7th Art. 2 (2017).

CASE NOTES

ANALYSIS

Endangered and Impaired Adult.
Neglect.

Endangered and Impaired Adult.

Trial court did not clearly err in determining that an individual was an endangered and impaired adult who was unable to protect herself from neglect where her improvements did not occur until she was in Department of Human Services custody and receiving assistance, her dementia and delirium prevented her from being able to properly care for herself, and a doctor testified that her morbid obesity and mental impairments meant that she lacked the capacity to protect herself. *Pardew v. Ark. Dep’t of Human Servs.*, 2017 Ark. App. 70, 513 S.W.3d 265 (2017).

Neglect.

Patient was properly committed to the protective custody of the Department of Human Services because a form of adult maltreatment was neglect; a trial court made the necessary findings that the patient lacked the capacity to comprehend the nature and consequences of remaining in a situation that presented an imminent danger to her health or safety and was unable to provide for her own protection from maltreatment, specifically including self-neglect, due to her mental and physical ailments. *Doran v. Dep’t of Human Servs.*, 2014 Ark. App. 505, 442 S.W.3d 868 (2014).

Cited: *Courtyard Gardens Health & Rehab., LLC v. Sheffield*, 2016 Ark. 235, 495 S.W.3d 69 (2016).

9-20-104. Spiritual treatment alone not abusive.

Nothing in this chapter implies that an endangered adult or impaired adult who is being furnished with treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof is for this reason alone an endangered adult or an impaired adult.

History. Acts 2005, No. 1811, § 1.

9-20-105. Privilege not grounds for exclusion of evidence.

Any privilege between husband and wife or between any professional persons, except lawyer and client, including, but not limited to, physicians, members of the clergy, counselors, hospitals, clinics, rest homes, nursing homes, and their clients, shall not constitute grounds for excluding evidence at any proceedings regarding an endangered adult or an impaired adult, or the cause of the proceeding.

History. Acts 2005, No. 1811, § 1.

9-20-106. Immunity for investigation participants.

Any person, official, or institution participating in good faith in the removal of a maltreated adult pursuant to this chapter shall have immunity from liability and suit for damages, civil or criminal, that otherwise might result by reason of such actions.

History. Acts 2005, No. 1811, § 1.

9-20-107. Reports as evidence.

(a) A written report from persons or officials required to report under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(b) The affidavit of a physician, psychiatrist, psychologist, or licensed certified social worker shall be admissible in evidence in any proceeding relating to adult maltreatment or long-term care facility resident maltreatment.

(c)(1) The court may seal any records or parts of records containing protected health information as defined by the Health Insurance Portability and Accountability Act of 1996.

(2) If a court seals any records or parts of records under subdivision (c)(1) of this section, the sealed records or parts of records become confidential and shall not be released to nonparties without a written order of the court.

History. Acts 2005, No. 1811, § 1; Pub. L. No. 104-191, 110 Stat. 1936, referred to in (b), is codified throughout 2009, No. 526, § 2.

U.S. Code. The Health Insurance Portability and Accountability Act of 1996, Titles 18, 26, 29 and 42 of the U.S. Code.

9-20-108. Jurisdiction — Venue — Eligibility.

(a)(1) The probate division of circuit court shall have jurisdiction over proceedings for:

- (A) Custody;
- (B) Temporary custody for purposes of evaluation;
- (C) Less-than-custody;
- (D) Court-ordered protective services; or
- (E) An order of investigation under this chapter.

(2) The probate division of circuit court may retain jurisdiction for no more than one hundred eighty (180) days after the death of an adult in the custody of the Department of Human Services to enter orders concerning disposition of the body of the adult as well as any assets of the adult, including the ability to order payment for services rendered or goods purchased by or for the adult while in the custody of the department before the death of the adult.

(b)(1) A proceeding under this chapter shall be commenced in the probate division of the circuit court of the county where:

- (A) The maltreated adult resides; or
- (B) The maltreatment occurred.

(2)(A) An adult custody proceeding shall not be dismissed if a proceeding is filed in the incorrect county.

(B) If the proceeding is filed in the incorrect county, the adult custody proceeding shall be transferred to the proper county upon discovery of the proper county for venue.

(C) Following the long-term custody hearing, the court may on its own motion or on motion of any party transfer the case to another county if the judge in the other venue agrees to accept the transfer.

(c)(1) Eligibility for services from the department, including custody, for aliens and nonaliens shall be the same eligibility requirements for the Arkansas Medicaid Program.

(2) If an adult who is in the custody of the department does not meet the eligibility requirements for the Arkansas Medicaid Program due to exceeding income or resource limitations for eligibility at the time the department assumes custody of the adult or at any point after the department assumes custody of the adult, the court shall:

(A) Direct payment from the assets of the adult who is in the custody of the department if it is necessary to pay for services rendered or goods purchased by or on behalf of the adult; and

(B) Enter an order regarding the use or sale of the income or resources of the adult who is in the custody of the department that is necessary to provide for services rendered or goods purchased by or on behalf of the adult.

(3) The court shall not order the department to pay for services rendered or goods purchased by or on behalf of the adult who is in the custody of the department including without limitation placement for the adult.

(d) No person may be taken into custody or placed in the custody of the department under this section if that person is in need of:

(1) Acute psychiatric treatment;

(2) Chronic mental health treatment;

(3) Alcohol or drug abuse treatment;

(4) Protection from domestic abuse if that person is mentally competent; or

(5) Casework supervision by mental health professionals.

(e) No adult may be taken into custody or placed in the custody of the department for the sole purpose of consenting to the adult's medical treatment.

(f)(1) If the maltreated adult is found to be indigent and the court appoints the Arkansas Public Defender Commission as counsel for the maltreated adult, the commission shall represent the maltreated adult as to the issue of deprivation of liberty, but not with respect to issues involving property, money, investments, or other fiscal issues.

(2) As to issues requiring court approval under § 9-20-120(b), the commission's role shall be to ensure that qualified medical personnel provide testimony or an affidavit with clear and convincing evidence to support the proposed medical action or inaction.

(3) If the court appoints the public defender as counsel for the maltreated adult and assets are later identified for the maltreated adult, the court may award an attorney's fee to the commission.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 3; 2011, No. 206, § 2; 2019, No. 326, § 1; 2019, No. 956, § 1. The 2019 amendment by No. 956 added (c)(2) and (c)(3).

Amendments. The 2019 amendment by No. 326 repealed (f)(2)(B).

CASE NOTES

ANALYSIS

Applicability.

Cross-Examination.

Applicability.

Appellant's argument was rejected that her status as a person "in need of chronic mental health treatment" for purposes of subdivision (d)(2) of this section precluded application of the Adult Maltreatment Custody Act, § 9-20-101 et seq., to her and the order placing her in the long-term custody of the Department of Human Services; in addition to a bipolar disorder, clear and convincing evidence showed that appellant had unspecified neurocognitive disorder (dementia), likely Alzheimer's type, she lacked the capacity to comprehend the nature and consequences of remaining in a situation that presented an imminent danger to her health or safety, she was unable to protect herself from maltreatment, and she was in need

of placement. Moreover, appellant had been evicted from her home, did not understand that she no longer had a home to return to, had no plan to avoid homelessness, and lacked insight regarding her mental-impairment issues. *O.C. v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 581, 591 S.W.3d 812 (2019).

Cross-Examination.

Individual did not demonstrate prejudice as a result of the circuit court limiting his ability to cross-examine the caseworker as to his assets or available benefits where the circuit court had allowed the caseworker to answer further cross-examination concerning any other financial assets the individual might have had aside from his Social Security and the bank account, and the caseworker responded that she had no knowledge of any other assets. *Johnston v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 51, 515 S.W.3d 620 (2017).

9-20-109. Commencement of proceedings.

(a) Proceedings shall be commenced by filing a petition with the clerk of the probate division of circuit court.

(b) Only the Department of Human Services may file a petition seeking ex parte emergency relief.

(c) No fees may be charged or collected by the clerk in cases brought by the department, including, but not limited to:

- (1) Fees for filing;
- (2) Summons; or
- (3) Subpoenas.

(d) The court shall immediately appoint the Arkansas Public Defender Commission to represent the maltreated adult if:

(1) There is reasonable cause to believe the maltreated adult is indigent; or

(2) The maltreated adult's liberty interest is in jeopardy and the financial condition of the maltreated adult is undetermined.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 4.

9-20-110. Petition.

A petition shall set forth the following:

- (1) The name, address, and if known, the date of birth of the maltreated adult who shall be designated as the respondent;
- (2) The maltreated adult's current location;
- (3) The name and address of the maltreated adult's closest adult relative, if known;
- (4)(A) The facts intended to prove the person to be maltreated.
(B) The facts may be set out in an affidavit attached to the petition and incorporated into the petition; and
- (5) The relief requested by the petitioner.

History. Acts 2005, No. 1811, § 1.

9-20-111. Notification.

(a) All maltreated adults named as the respondent shall be served with a copy of the petition under the Arkansas Rules of Civil Procedure.

(b) The Department of Human Services shall provide immediate notice of the date, time, and location of the probable cause hearing to:

- (1) The respondent;
- (2) The person from whom physical custody of the respondent was removed; and
- (3) Counsel for the respondent.

(c) The pleadings served on the respondent shall include a statement of the right to:

- (1)(A) Have an attorney represent him or her in this matter.
(B) If the respondent desires an attorney to represent him or her but the respondent cannot afford to hire an attorney, an attorney will be appointed to represent the respondent by the court at no cost to the respondent;
 - (2) Be present at the hearing;
 - (3) Present evidence on the respondent's own behalf;
 - (4) Cross-examine witnesses who testify against him or her;
 - (5) Present witnesses in the respondent's own behalf;
 - (6) Remain silent; and
 - (7) View and copy all petitions, reports, and documents retained in the court file.
- (d) Notice of the long-term custody hearing shall be given to:
- (1) The legal counsel of the respondent;
 - (2) The next of kin of the respondent whose names and addresses are known to the petitioner;
 - (3) The person having physical custody of the respondent;
 - (4) Any person named in the petition; and
 - (5) Any other persons or entities that the court may require.

History. Acts 2005, No. 1811, § 1;
2009, No. 526, § 5.

CASE NOTES

Notice Sufficient.

Circuit court's finding that an individual needed placement was not clearly erroneous where a caseworker testified that she had contacted his family by phone, no one returned her calls or at-

tempted to assist in the individual's care, and the individual was left alone in his home and required 24-hour care. *Howard v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 68, 512 S.W.3d 676 (2017).

9-20-112. Voluntary protective placement.

(a) Any adult may request voluntary protective placement under this chapter.

(b) No civil rights are relinquished as a result of voluntary protective placement.

(c) Procedures for hearings under this chapter shall be followed with regard to voluntary protective placement.

History. Acts 2005, No. 1811, § 1.

9-20-113. Evaluations.

(a) The Department of Human Services may petition the circuit court for an order of temporary custody for the purpose of having an adult evaluated if during the course of an investigation under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., the department determines that:

(1) Immediate removal is necessary to protect the adult from imminent danger to his or her health or safety;

(2) Available protective services have been offered to alleviate the danger and have been refused; and

(3) An adequate assessment of the following cannot be made in the adult's place of residence:

(A) The adult's capacity to comprehend the nature and consequences of remaining in the situation or condition; or

(B) The adult's mental or physical impairment and ability to protect himself or herself from adult maltreatment.

(b) Upon good cause being shown, the court may issue an order for temporary custody for the purpose of having the adult evaluated.

History. Acts 2005, No. 1811, § 1; 2007, No. 497, § 2; 2011, No. 793, § 6.

9-20-114. Emergency custody.

(a) The Department of Human Services or a law enforcement official may take a maltreated adult into emergency custody, or any person in charge of a hospital or similar institution or any physician treating any maltreated adult may keep the maltreated adult in custody, whether or not medical treatment is required, if the circumstances or condition of the maltreated adult are such that returning to or continuing at the maltreated adult's place of residence or in the care or custody of a

parent, guardian, or other person responsible for the maltreated adult's care presents imminent danger to the maltreated adult's health or safety, and the maltreated adult either:

(1) Lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents imminent danger to his or her health or safety; or

(2) Has a mental impairment or a physical impairment that prevents the maltreated adult from protecting himself or herself from imminent danger to his or her health or safety.

(b) Emergency custody shall not exceed seventy-two (72) hours unless the expiration of seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody shall be extended through the next business day following the weekend or holiday.

(c) A person who takes a maltreated adult into emergency custody shall notify the department immediately upon taking the adult into emergency custody.

(d) The department may release custody of an adult within the seventy-two (72) hours if the adult is no longer in circumstances or conditions that present imminent danger to the adult's health or safety.

(e)(1) If emergency custody is exercised under this section, the person exercising the custody or an authorized employee of the department may consent to having the maltreated adult transported by a law enforcement officer or by an emergency medical services provider if medically appropriate, even if the adult objects.

(2) No court order shall be required for transport by law enforcement or an emergency medical services provider.

(3) A law enforcement officer, an emergency medical services provider, and the employees of an emergency medical services provider are immune from criminal and civil liability for injury, death, or loss that allegedly arises from good faith action taken in accordance with this subsection.

(4) There is a presumption of good faith on the part of a law enforcement officer, an emergency medical services provider, and the employees of an emergency medical services provider that act in accordance with subdivisions (e)(1) and (2) of this section.

History. Acts 2005, No. 1811, § 1; 2007, No. 283, § 2; 2007, No. 497, § 3; 2017, No. 579, § 2.

Amendments. The 2017 amendment, in (e)(1), inserted "an authorized employee of" and substituted "an emergency medi-

cal services provider" for "ambulance"; in (e)(2), inserted "transport by" and substituted "an emergency medical services provider" for "ambulance transport"; and rewrote (e)(3) and (e)(4).

9-20-115. Emergency orders.

(a)(1) If there is probable cause to believe that immediate emergency custody is necessary to protect a maltreated adult, the probate division of circuit court shall issue an ex parte order for emergency custody to protect the maltreated adult.

(2) If there is probable cause to believe that immediate emergency action is necessary to protect an endangered or impaired adult from adult maltreatment, the probate division of circuit court may issue an ex parte less-than-custody order to protect the adult in lieu of an ex parte order for emergency custody.

(b) The Department of Human Services shall obtain an emergency ex parte order of custody on a maltreated adult within seventy-two (72) hours of taking the maltreated adult into emergency custody unless the expiration of the seventy-two (72) hours falls on a weekend or holiday, in which case emergency custody may be extended through the next business day following the weekend or holiday.

(c) The emergency order shall include notice to the maltreated adult and the person from whom physical custody of the respondent was removed of the right to a hearing and that a hearing will be held within five (5) business days of the issuance of the ex parte order.

History. Acts 2005, No. 1811, § 1; 2011, No. 206, § 3; 2013, No. 583, § 2.

9-20-116. Probable cause hearing.

(a)(1) Following issuance of an emergency order, the probate division of circuit court shall hold a hearing within five (5) business days to determine whether probable cause to issue the emergency order continues to exist.

(2) The court may hold a probable cause hearing anywhere in the judicial district.

(3)(A) An authorized employee of the Department of Human Services may consent, over the objection of the maltreated adult, to a law enforcement officer's or an emergency medical services provider's transporting the maltreated adult to the probable cause hearing required under subdivision (a)(1) of this section, if medically appropriate.

(B) A court order is not required before a law enforcement officer or an emergency medical services provider may transport a maltreated adult in accordance with subdivision (a)(3)(A) of this section.

(C) An emergency medical services provider, the employees of an emergency medical services provider, and a law enforcement officer are immune from criminal and civil liability for injury, death, or loss allegedly arising from good faith action taken in accordance with subdivisions (a)(3)(A) and (B) of this section.

(D) There is a presumption of good faith on the part of an emergency medical services provider, the employees of an emergency medical services provider, and a law enforcement officer that act in accordance with subdivisions (a)(3)(A) and (B) of this section.

(b)(1) At the probable cause hearing, the court shall make the following inquiries of the maltreated adult or other witnesses:

(A) Whether the maltreated adult has the financial ability to retain counsel; and

(B) If the maltreated adult does not have the financial ability to retain counsel, whether the maltreated adult is indigent.

(2) The court shall:

(A) Inform the maltreated adult of the right to effective assistance of counsel; and

(B) If the maltreated adult is indigent, appoint counsel for the maltreated adult.

(c) The hearing shall be limited to the purpose of determining whether probable cause:

(1) Existed to protect the maltreated adult; and

(2)(A) Still exists to protect the maltreated adult.

(B) If the maltreated adult has a physical impairment but does not have a mental impairment, the court shall determine whether the maltreated adult shall remain in the custody of the department by specifically addressing these issues:

(i) The current risk to the maltreated adult if removed from the custody of the department and returned to the home or situation from which the maltreated adult was removed;

(ii) Whether the maltreated adult has a mental impairment and if not, inquiry of the maltreated adult whether the maltreated adult wants to remain in the custody of the department; and

(iii) If the maltreated adult does not want to remain in the custody of the department, is the request of the maltreated adult made intelligently, with full knowledge of the risk if custody is dismissed and the request is unequivocal.

(d) The court may enter orders:

(1) Regarding protection of assets of the maltreated adult; or

(2) Ordering or authorizing the department to obtain treatment, evaluations, or services for the maltreated adult.

(e) The probable cause hearing shall be a miscellaneous hearing.

(f)(1) Upon a finding of probable cause, the court may order temporary custody for up to thirty (30) days pending the hearing for long-term custody.

(2) However, the court may extend the time under subdivision (f)(1) of this section upon a finding that extenuating circumstances exist.

History. Acts 2005, No. 1811, § 1; redesignated former (c)(2) as (c)(2)(A); and
2007, No. 283, § 3; 2015, No. 1214, § 1; added (c)(2)(B).
2017, No. 579, § 3. The 2017 amendment added (a)(3).

Amendments. The 2015 amendment

9-20-117. Long-term custody and court-ordered protective services hearings.

(a)(1) A hearing for long-term custody or court-ordered protective services shall be held no later than thirty (30) days after the date of the probable cause hearing or the date the order for emergency custody was signed.

(2) However, the probate division of circuit court may extend the time during which the hearing must be held upon a finding that extenuating circumstances exist.

(b)(1) The court may hold a hearing for long-term custody or protective services anywhere in the judicial district.

(2)(A) An authorized employee of the Department of Human Services may consent, over the objection of the maltreated adult, to a law enforcement officer's or an emergency medical services provider's transporting the maltreated adult to a hearing required under subsection (a) of this section if medically appropriate.

(B) A court order is not required before a law enforcement officer or an emergency medical services provider may transport a maltreated adult in accordance with subdivision (b)(2)(A) of this section.

(C) An emergency medical services provider, the employees of a medical services provider, and a law enforcement officer are immune from criminal and civil liability for injury, death, or loss allegedly arising from good faith action taken in accordance with subdivisions (b)(2)(A) and (B) of this section.

(D) There is a presumption of good faith on the part of an emergency medical services provider, the employees of an emergency medical services provider, and a law enforcement officer that act in accordance with subdivisions (b)(2)(A) and (B) of this section.

(c) The court may order long-term custody with the department if the court determines that:

(1) The adult has a mental or physical impairment or lacks the capacity to comprehend the nature and consequences of remaining in a situation that presents an imminent danger to his or her health or safety;

(2) The adult is unable to provide for his or her own protection from maltreatment; and

(3) The court finds clear and convincing evidence that the adult to be placed is in need of placement as provided in this chapter.

(d)(1) The court shall make a finding in connection with the determination of the least restrictive alternative to be considered proper under the circumstances, including a finding for noninstitutional care if possible.

(2) If protective services are available to remedy the imminent danger to the maltreated adult, the court may order the adult or the caregiver for the adult to accept the protective services in lieu of placing the adult in the custody of the department.

(e)(1) The court may order that treatment, evaluations, and services be obtained for the maltreated adult.

(2) However, the court may not specify a particular provider for services or placement unless the adult is paying for the service or placement.

(f) The court may order that Social Security, retirement, or other sources of income be redirected on behalf of the maltreated adult.

History. Acts 2005, No. 1811, § 1; 2007, No. 283, § 4; 2009, No. 526, § 6; 2017, No. 579, § 4.

Amendments. The 2017 amendment redesignated former (b) as (b)(1), and added (b)(2).

CASE NOTES

ANALYSIS

Applicability.
Endangered and Impaired Adult.
Institutional Care.
Self-Neglect.

Applicability.

Appellant's argument was rejected that her status as a person "in need of chronic mental health treatment" for purposes of § 9-20-108(d)(2) precluded application of the Arkansas Adult Maltreatment Custody Act, § 9-20-101 et seq., to her and the order placing her in the long-term custody of the Department of Human Services; in addition to a bipolar disorder, clear and convincing evidence showed that appellant had unspecified neurocognitive disorder (dementia), likely Alzheimer's type, she lacked the capacity to comprehend the nature and consequences of remaining in a situation that presented an imminent danger to her health or safety, she was unable to protect herself from maltreatment, and she was in need of placement. Moreover, appellant had been evicted from her home, did not understand that she no longer had a home to return to, had no plan to avoid homelessness, and lacked insight regarding her mental-impairment issues. *O.C. v. Ark. Dep't of Human Servs.*, 2019 Ark. App. 581, 591 S.W.3d 812 (2019).

Endangered and Impaired Adult.

Trial court did not clearly err in determining that an individual was an endangered and impaired adult who was unable to protect herself from neglect where her improvements did not occur until she was in Department of Human Services custody and receiving assistance, her dementia and delirium prevented her from being able to properly care for herself, and a doctor testified that her morbid obesity and mental impairments meant that she lacked the capacity to protect herself. *Pardew v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 70, 513 S.W.3d 265 (2017).

Probable cause existed to place appellant in long-term protective custody

where three physician affidavits, a Department of Human Services investigator's testimony, and the appellant's own testimony established that she had dementia and lacked the ability to protect herself from harm, take care of herself, and remember to take her medications. *Stegall v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 76, 542 S.W.3d 187 (2018).

Institutional Care.

Circuit court did not err in finding that institutional care was the least restrictive alternative under subsection (d) of this section where the individual's physician and caseworker recommended such care, he needed continuous care and his home was unsafe, and there were no willing family members to provide the necessary care. *Howard v. Ark. Dep't of Human Servs.*, 2017 Ark. App. 68, 512 S.W.3d 676 (2017).

Trial court's findings regarding appellant's long-term placement in nursing home care were not clearly erroneous where the court ordered the Department of Human Services to place appellant at an appropriate facility in the least-restrictive environment that best met her needs, and two of three physicians averred that nursing-home care was a least-restrictive-placement option for her. *Stegall v. Ark. Dep't of Human Servs.*, 2018 Ark. App. 76, 542 S.W.3d 187 (2018).

Self-Neglect.

Patient was properly committed to the protective custody of the Department of Human Services because a form of adult maltreatment was neglect; a trial court made the necessary findings that the patient lacked the capacity to comprehend the nature and consequences of remaining in a situation that presented an imminent danger to her health or safety and was unable to provide for her own protection from maltreatment, specifically including self-neglect, due to her mental and physical ailments. *Doran v. Dep't of Human Servs.*, 2014 Ark. App. 505, 442 S.W.3d 868 (2014).

9-20-118. Review hearings.

(a) The Department of Human Services shall periodically review the case of an adult in the custody of the department, but not less often than one (1) time every six (6) months.

(b) The circuit court shall review the case of an adult in the custody of the department, either formally or informally as determined by the court, at least one (1) time every twelve (12) months.

(c) Notice for review hearings shall be by regular mail to the attorney for the respondent and to the administrator of the facility in which the respondent is placed.

(d)(1) Upon presentation of a statement under oath by a medical doctor that attendance at the hearing is not in the best interest of the adult based on the adult's mental incapacity or physical health, the court shall waive the presence of the adult at a review hearing unless there is a showing by the adult's attorney that the adult's attendance at the court hearing is necessary.

(2) If it is not in the adult's best interest to appear at court under subdivision (d)(1) of this section, the adult may submit a written statement or an audio or video statement for consideration by the court.

History. Acts 2005, No. 1811, § 1;
2009, No. 526, § 7.

9-20-119. Assets of a maltreated adult.

(a)(1) The probate division of circuit court may enter orders as needed to identify, secure, and protect the assets of any adult in the custody of the Department of Human Services or any maltreated adult receiving court-ordered protective services from the department.

(2) If the court orders the adult placed in the custody of the department, the court shall address the issue of the adult's residence, whether rented or owned by the adult, including the cleaning, vacating, selling, or leasing of the residence, and the disposition of the property in the residence.

(3) After review of the assets, the court may order the sale of any assets if it is in the best interest of the adult.

(b) The court may also direct payment from the assets of the adult in department custody or receiving protective services from the department for services rendered or goods purchased by or for the adult in the custody of the department or receiving services from the department.

(c)(1) The court may appoint the department only as custodian of the adult and not as guardian of the person or of the estate of the adult, except to appoint a public guardian under § 28-65-701 et seq.

(2) The court has jurisdiction in this matter to hear and grant a petition for guardianship of the estate of an adult in the custody of the department.

History. Acts 2005, No. 1811, § 1;
2009, No. 526, § 8; 2011, No. 206, § 4.

CASE NOTES

Authority.

Because the court-appointed emergency custodian of the decedent, when the decedent was a ward under the Adult Maltreatment Custody Act, § 9-20-101 et seq., had no authority under § 9-20-120 to make decisions concerning the decedent's estate, the custodian could not bind the decedent to arbitration when the custo-

dian signed an admission agreement and an arbitration agreement in admitting the decedent to the nursing facility before the decedent's death. Therefore, the arbitration agreement by which the nursing facility sought to compel arbitration was invalid. *Courtyard Gardens Health & Rehab., LLC v. Sheffield*, 2016 Ark. 235, 495 S.W.3d 69 (2016).

9-20-120. Duties and responsibilities of custodian.

(a)(1) If the probate division of circuit court appoints the Department of Human Services as the legal custodian of a maltreated adult, the department shall:

(A) Secure care and maintenance for the person;

(B) Honor any advance directives, such as living wills, if the legal documents were executed in conformity with applicable laws; and

(C) Find a person to be guardian of the estate of the adult if a guardian of the estate is needed.

(2) If the court appoints the department as the legal custodian of a maltreated adult on an emergency, temporary, or long-term basis, the department may:

(A) Consent to medical care for the adult;

(B) Obtain physical or psychological evaluations;

(C) Obtain medical, financial, and other records of the adult; and

(D) Obtain or view financial information of the adult that is maintained by a bank or similar institution.

(b) The department as custodian shall not make any of the following decisions without receiving express court approval:

(1) Consent to abortion, sterilization, psychosurgery, or removal of bodily organs unless a procedure is necessary in a situation threatening the life of the maltreated adult;

(2) Consent to withholding life-saving treatment;

(3) Authorization of experimental medical procedures;

(4) Authorization of termination of parental rights;

(5) Prohibition of the adult from voting;

(6) Prohibition of the adult from obtaining a driver's license;

(7) Consent to a settlement or compromise of any claim by or against the adult or his or her estate;

(8) Consent to the liquidation of assets of the adult through such activities as an estate sale;

(9) Consent to amputation of any part of the body unless a procedure is necessary in a situation threatening the life of the maltreated adult; or

(10) Consent to withholding life-sustaining treatment.

(c)(1) Upon the death of a person in the custody of the department, the department shall abide by a prior arrangement made by the person for the disposition of the person's body.

(2) If prior arrangements were not made:

(A) The department may request the court to grant authority to the department to use funds or resources of the deceased person as to the disposition of the body; or

(B) Upon consent from the person's closest family member or after notice and the opportunity to be heard by the court, the department may consent to donate the person's body to medical science.

(3) The department is not responsible for any costs related to the disposition of the person's body.

History. Acts 2005, No. 1811, § 1; 2009, No. 526, § 9; 2011, No. 206, § 5; 2019, No. 326, § 2.

Amendments. The 2019 amendment

added "unless a procedure is necessary in a situation threatening the life of the maltreated adult" in (b)(9).

CASE NOTES

Authority.

Legislature intended for custodians to play a more limited role than guardians. The main purpose of a custodian is to ensure that the ward is safe and cared for appropriately and that the ward's assets are secure. *Courtyard Gardens Health & Rehab., LLC v. Sheffield*, 2016 Ark. 235, 495 S.W.3d 69 (2016).

Custodian of a ward under the Adult Maltreatment Custody Act, § 9-20-101 et seq., does not have the authority to bind the ward to arbitration. *Courtyard Gardens Health & Rehab., LLC v. Sheffield*, 2016 Ark. 235, 495 S.W.3d 69 (2016).

Because the court-appointed emergency

custodian of the decedent, when the decedent was a ward under the Adult Maltreatment Custody Act, § 9-20-101 et seq., had no authority under this section to make decisions concerning the decedent's estate, the custodian could not bind the decedent to arbitration when the custodian signed an admission agreement and an arbitration agreement in admitting the decedent to the nursing facility before the decedent's death. Therefore, the arbitration agreement by which the nursing facility sought to compel arbitration was invalid. *Courtyard Gardens Health & Rehab., LLC v. Sheffield*, 2016 Ark. 235, 495 S.W.3d 69 (2016).

9-20-121. Availability of custody and protective services records.

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials, including protected health information, compiled or gathered by the Department of Human Services regarding a maltreated adult in the custody of the department or receiving protective services from the department shall be confidential and shall not be released or otherwise made available except:

(1) To the maltreated adult;

(2) To the attorney representing the maltreated adult in a custody or protective services case when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult;

(3) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(4) To law enforcement agencies, a prosecuting attorney, or the Attorney General;

(5)(A) To any licensing or registering authority to the extent necessary to carry out its official responsibilities.

(B) Information released under subdivision (5)(A) of this section shall be maintained as confidential;

(6) To a circuit court under this chapter;

(7) To a grand jury or court upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury;

(8) To a person or provider currently providing care or services to the adult;

(9) To a person or provider identified by the department as having services needed by the adult;

(10)(A)(i) To individual federal and state representatives and senators in their official capacity when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult.

(ii) Federal and state representatives and senators shall not redisclose the information.

(B) No disclosure may be made to any committee or legislative body of any information that identifies by name or address any recipient of services;

(11) In the discretion of the department, if the adult is in the custody of the department, the department may share:

(A) Information as permitted by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, when the disclosure of information is:

(i) To family, friends, or anyone else authorized by the maltreated adult;

(ii) Needed to assist with the care of the maltreated adult;

(iii) Needed to notify a person of the maltreated adult's location and general condition; and

(iv) Not objected to by the maltreated adult; and

(B) Appropriate information when the maltreated adult is incapacitated when it is in the best interest of the maltreated adult;

(12) To the Office of Medicaid Inspector General; and

(13) To an individual authorized by the maltreated adult in an executed authorization form that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, or valid court order.

(b) Except for the maltreated adult, no person or agency to whom disclosure is made may disclose to any other person reports or other information obtained under this section.

(c) A disclosure of information in violation of this section shall be a Class C misdemeanor.

(d)(1) Data, records, reports, or documents released under this section to a law enforcement agency, the prosecuting attorney, or a court by the department:

- (A) Are confidential;
- (B) Shall be sealed; and
- (C) Shall not be redisclosed without a protective order.

(2) Data, records, reports, or documents released under this section are confidential and are items of evidence for which there is a reasonable expectation of privacy that the items will not be distributed to persons or institutions without a legitimate interest in the evidence.

(3) This chapter does not contain language that is deemed to abrogate the right of discovery in a criminal case under the Arkansas Rules of Criminal Procedure or other applicable law.

History. Acts 2005, No. 1811, § 1; 2007, No. 283, § 5; 2015, No. 1214, § 2.

Amendments. The 2015 amendment added “when the disclosure is authorized in a court order or an authorization form that complies with the Health Insurance

Portability and Accountability Act of 1996, Pub. L. No. 104-191, executed by the maltreated adult” in (a)(2); rewrote (a)(10)(A) and (a)(11); added (a)(12) and (13); and added (d).

9-20-122. Evaluation of prospective guardians.

(a) Regarding an individual listed in subsection (b) of this section, the Department of Human Services may:

(1) Request a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulations for convictions regarding violations under this subchapter;

(2) Perform a criminal records check with the Identification Bureau of the Division of Arkansas State Police for convictions regarding violations under this subchapter;

(3) Check the Adult and Long-term Care Facility Resident Maltreatment Central Registry for previous true findings of adult maltreatment;

(4) Request a check of the Adult and Long-term Care Facility Resident Maltreatment Central Registry or its equivalent in the state of residence; and

(5) Perform an evaluation of the home or proposed dwelling for an adult in the Department of Human Services’ custody.

(b) Subsection (a) of this section applies to an individual who has:

(1) Requested consideration to be appointed guardian under § 28-65-101 et seq., of an adult in the custody of the Department of Human Services;

(2) Requested custody of an adult in the custody of the Department of Human Services; and

(3) Petitioned a court of competent jurisdiction:

(A) To be appointed guardian, under § 28-65-101 et seq.; or

(B) For custody of an adult in the custody of the Department of Human Services.

History. Acts 2011, No. 206, § 6.

9-20-123. Rights of relatives.

(a)(1) If a relative has reason to believe coupled with facts to substantiate his or her belief that the Department of Human Services is unreasonably interfering with or denying visitation between the relative and an endangered adult or an impaired adult as defined in § 9-20-103(6) and (10) respectively, the relative may file a petition for reasonable visitation with the endangered adult or the impaired adult in a court with jurisdiction over proceedings under this chapter that concern the endangered adult or the impaired adult.

(2) A petition for reasonable visitation filed under this section shall be verified and state:

(A) Whether the petitioner is a relative as defined under § 9-20-103;

(B) Whether the department is unreasonably interfering with or denying visitation between the petitioner and the endangered adult or the impaired adult;

(C) Whether the department is the custodian of the endangered adult or the impaired adult; and

(D) The facts supporting the petitioner's allegation that the department as custodian of the endangered or the impaired adult is unreasonably interfering with or denying visitation between the petitioner and the endangered adult or the impaired adult.

(3)(A) A petition for reasonable visitation filed under this section shall be served on all parties to a custody proceeding that is initiated under this chapter and concerns the endangered adult or the impaired adult who is the subject of the petition for reasonable visitation.

(B) A relative who files a petition for reasonable visitation under this section is not a party to a custody proceeding described under subdivision (a)(3)(A) of this section.

(b)(1)(A) If an endangered adult or an impaired adult objects to visitation with the petitioner, the petitioner shall prove by a preponderance of the evidence that the endangered adult or the impaired adult was unduly influenced by the department or another person.

(B) The court shall not find undue influence on the part of the department or another person if the attorney for the endangered adult or the impaired adult confirms that the endangered adult or the impaired adult objects to visitation with the petitioner.

(2) If an endangered adult or an impaired adult consents to visitation with the petitioner, does not object to visitation with the petitioner, or is unable to express his or her consent or objection to visitation with the petitioner, the department shall prove one (1) or more of the following conditions by a preponderance of the evidence in order to overcome the presumption that visitation between the petitioner and the endangered adult or the impaired adult is in the best interest of the endangered adult or the impaired adult:

(A) The petitioner physically abused, exploited, neglected, sexually abused, or otherwise maltreated the endangered adult, the impaired adult, or another adult; or

(B) Visitation between the petitioner and the endangered adult or the impaired adult would be harmful to the mental health or physical well-being of the endangered adult or the impaired adult.

(c)(1) An order issued by the court granting or denying a petition for reasonable visitation filed under this section shall include statements of fact and law supporting the court's order.

(2) If the court grants the petition for reasonable visitation, then:

(A) The court may impose reasonable restrictions on visitation between the petitioner and the endangered adult or the impaired adult;

(B) The petitioner shall be responsible for paying costs associated with the visitation, including, but not limited to, transportation and supervision costs;

(C) Visitation shall not occur in a manner that negatively impacts the medical or treatment needs of the endangered adult or the impaired adult;

(D) Visitation shall occur at the placement location of the endangered adult or the impaired adult;

(E) Visitation shall be subject to the rules of the facility in which the endangered adult or the impaired adult is placed; and

(F) The court may impose on the department the cost of filing the petition for reasonable visitation and reasonable attorney's fees incurred by the petitioner as a result of the department's opposing the petition if the department:

(i) Is the custodian of the endangered adult or the impaired adult;

(ii) Unreasonably interfered with or denied visitation between the petitioner and the endangered adult or the impaired adult; and

(iii) Opposed visitation between the petitioner and the endangered adult or the impaired adult in bad faith.

(3) If the court denies the petition for reasonable visitation, the:

(A) Petitioner may file another petition for reasonable visitation no earlier than one (1) year after the date on which the court enters the order denying visitation if there is a material change in circumstances; and

(B) Court may impose on the petitioner the costs of opposing the petition, including without limitation the costs for subpoenas, witness fees, and reasonable attorney's fees incurred by the department.

(d) The court shall not impose costs on:

(1) A person or entity that in good faith interfered with or denied visitation at the direction of the department; or

(2) The endangered adult or the impaired adult.

9-20-124. Consideration of issues requiring court approval.

(a) The Department of Human Services shall:

(1) Request court approval in accordance with § 9-20-120(b) by filing a written motion requesting court approval by the court;

(2)(A) Include an affidavit from the attending physician of the respondent when the request for court approval relates to a decision described in § 9-20-120(b)(1)-(3), (9), and (10).

(B) The affidavit shall:

(i) Describe the medical need or appropriateness for the action requested;

(ii) Include information on the diagnosis, prognosis, and treatment of the respondent;

(iii) Include information on any possible consequences that may occur if treatment is withheld from the respondent;

(iv) Include information on whether treatment of the respondent only prolongs the respondent's health; and

(v) Include the name and contact information of the attending physician of the respondent; and

(3) Serve a copy of the motion and affidavit on the attorney for the respondent within twenty-four (24) hours from the time of filing.

(b)(1) The court shall:

(A)(i) Conduct a hearing within three (3) business days from the date on which a motion requesting court approval is filed.

(ii) A hearing is not required if counsel for both parties agree to waive the hearing or if an emergency exists for entry of an order.

(iii) The court shall allow a motion filed under this section to be heard on transfer by another division of the circuit court in order to ensure that a hearing conducted under subdivision (b)(1)(A)(i) of this section is heard within the required time frame;

(B)(i) Enter a decision on the motion requesting court approval within three (3) business days from the date of the hearing.

(ii) If a hearing is not conducted, the court shall enter a decision on the motion requesting court approval within three (3) business days from the date on which a motion requesting court approval is filed;

(C) Grant a motion requesting court approval that does not include an affidavit from the attending physician of the respondent if the court finds by clear and convincing evidence that granting the request is in the best interest of the respondent; and

(D) Grant a motion requesting court approval that includes an affidavit from the attending physician of the respondent if the court finds by clear and convincing evidence that:

(i) Granting the request is in the best interest of the respondent;

(ii) The attending physician of the respondent is requesting the medical action or inaction;

(iii) The evidence supports the need for the requested medical action or inaction; and

(iv) The respondent did not express an intent to oppose the medical action or inaction before losing the capacity to make his or her own medical decisions.

(2) The court may allow the attending physician of the respondent or another witness to testify by telephone or another medium as permitted by the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure.

History. Acts 2019, No. 326, § 3.

CHAPTER 21
UNIFORM DEPLOYED PARENTS CUSTODY AND VISITATION ACT

ARTICLE.

- 1. GENERAL PROVISIONS.
- 2. AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.
- 3. JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT.
- 4. RETURN FROM DEPLOYMENT.
- 5. MISCELLANEOUS PROVISIONS.

ARTICLE 1

GENERAL PROVISIONS

SECTION.

- 9-21-101. Short title.
- 9-21-102. Definitions.
- 9-21-103. Remedies for noncompliance.
- 9-21-104. Jurisdiction.
- 9-21-105. Notification required of deploying parent.

SECTION.

- 9-21-106. Duty to notify of change of address.
- 9-21-107. General consideration in custody proceeding of parent's military service.

9-21-101. Short title.

This chapter may be cited as the Uniform Deployed Parents Custody and Visitation Act.

History. Acts 2015, No. 1213, § 1.

9-21-102. Definitions.

In this chapter:

(1) "Adult" means an individual who has attained eighteen (18) years of age or an emancipated minor.

(2) "Caretaking authority" means the right to live with and care for a child on a day-to-day basis. The term includes physical custody, parenting time, right to access, and visitation.

(3) "Child" means:

(A) an unemancipated individual who has not attained eighteen (18) years of age; or

(B) an adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

(4) “Court” means a tribunal, including an administrative agency, authorized under law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

(5) “Custodial responsibility” includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

(6) “Decision-making authority” means the power to make important decisions regarding a child, including decisions regarding the child’s education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(7) “Deploying parent” means a service member, who is deployed or has been notified of impending deployment and is:

(A) a parent of a child under law of this state other than this chapter; or

(B) an individual who has custodial responsibility for a child under law of this state other than this chapter;

(8) “Deployment” means the movement or mobilization of a service member for more than ninety (90) days but less than eighteen (18) months pursuant to uniformed service orders that:

(A) are designated as unaccompanied;

(B) do not authorize dependent travel; or

(C) otherwise do not permit the movement of family members to the location to which the service member is deployed.

(9) “Family member” means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child or an individual recognized to be in a familial relationship with a child under law of this state other than this chapter.

(10) “Limited contact” means the authority of a nonparent to visit a child for a limited time. The term includes authority to take the child to a place other than the residence of the child.

(11) “Nonparent” means an individual other than a deploying parent or other parent.

(12) “Other parent” means an individual who, in common with a deploying parent, is:

(A) a parent of a child under law of this state other than this chapter; or

(B) an individual who has custodial responsibility for a child under law of this state other than this chapter.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Return from deployment” means the conclusion of a service member’s deployment as specified in uniformed service orders.

(15) “Service member” means a member of a uniformed service.

(16) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(17) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) “Uniformed service” means:

(A) active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

(B) the United States Merchant Marine;

(C) the commissioned corps of the United States Public Health Service;

(D) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(E) the National Guard of a state.

History. Acts 2015, No. 1213, § 1.

9-21-103. Remedies for noncompliance.

In addition to other remedies under law of this state other than this chapter, if a court finds that a party to a proceeding under this chapter has acted in bad faith or intentionally failed to comply with this chapter or a court order issued under this chapter, the court may assess reasonable attorney’s fees and costs against the party and order other appropriate relief.

History. Acts 2015, No. 1213, § 1.

9-21-104. Jurisdiction.

(a) A court may issue an order regarding custodial responsibility under this chapter only if the court has jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(b) If a court has issued a temporary order regarding custodial responsibility pursuant to Article 3, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., during the deployment.

(c) If a court has issued a permanent order regarding custodial responsibility before notice of deployment and the parents modify that order temporarily by agreement pursuant to Article 2, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(d) If a court in another state has issued a temporary order regarding custodial responsibility as a result of impending or current deployment, the residence of the deploying parent is not changed by reason of the deployment for the purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

(e) This section does not prevent a court from exercising temporary emergency jurisdiction under the Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq.

History. Acts 2015, No. 1213, § 1.

9-21-105. Notification required of deploying parent.

(a) Except as otherwise provided in subsection (d) and subject to subsection (c), a deploying parent shall notify in a record the other parent of a pending deployment not later than seven (7) days after receiving notice of deployment unless reasonably prevented from doing so by the circumstances of service. If the circumstances of service prevent giving notification within the seven (7) days, the deploying parent shall give the notification as soon as reasonably possible.

(b) Except as otherwise provided in subsection (d) and subject to subsection (c), each parent shall provide in a record the other parent with a plan for fulfilling that parent's share of custodial responsibility during deployment. Each parent shall provide the plan as soon as reasonably possible after notification of deployment is given under subsection (a).

(c) If a court order currently in effect prohibits disclosure of the address or contact information of the other parent, notification of deployment under subsection (a), or notification of a plan for custodial responsibility during deployment under subsection (b), may be made only to the issuing court. If the address of the other parent is available to the issuing court, the court shall forward the notification to the other parent. The court shall keep confidential the address or contact information of the other parent.

(d) Notification in a record under subsection (a) or (b) is not required if the parents are living in the same residence and both parents have actual notice of the deployment or plan.

(e) In a proceeding regarding custodial responsibility, a court may consider the reasonableness of a parent's efforts to comply with this section.

History. Acts 2015, No. 1213, § 1.

9-21-106. Duty to notify of change of address.

(a) Except as otherwise provided in subsection (b), an individual to whom custodial responsibility has been granted during deployment pursuant to Article 2 or 3 shall notify the deploying parent and any other individual with custodial responsibility of a child of any change of the individual's mailing address or residence until the grant is termi-

nated. The individual shall provide the notice to any court that has issued a custody or child support order concerning the child which is in effect.

(b) If a court order currently in effect prohibits disclosure of the address or contact information of an individual to whom custodial responsibility has been granted, a notification under subsection (a) may be made only to the court that issued the order. The court shall keep confidential the mailing address or residence of the individual to whom custodial responsibility has been granted.

History. Acts 2015, No. 1213, § 1.

9-21-107. General consideration in custody proceeding of parent’s military service.

In a proceeding for custodial responsibility of a child of a service member, a court may not consider a parent’s past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent’s past or possible future deployment.

History. Acts 2015, No. 1213, § 1.

ARTICLE 2

AGREEMENT ADDRESSING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

SECTION.	SECTION.
9-21-201. Form of agreement.	9-21-204. Power of attorney.
9-21-202. Nature of authority created by agreement.	9-21-205. Filing agreement or power of attorney with court.
9-21-203. Modification of agreement.	

9-21-201. Form of agreement.

- (a) The parents of a child may enter into a temporary agreement under this Article granting custodial responsibility during deployment.
- (b) An agreement under subsection (a) must be:
 - (1) in writing; and
 - (2) signed by both parents and any nonparent to whom custodial responsibility is granted.
- (c) Subject to subsection (d), an agreement under subsection (a), if feasible, must:
 - (1) identify the destination, duration, and conditions of the deployment that is the basis for the agreement;
 - (2) specify the allocation of caretaking authority among the deploying parent, the other parent, and any nonparent;
 - (3) specify any decision-making authority that accompanies a grant of caretaking authority;
 - (4) specify any grant of limited contact to a nonparent;

(5) if under the agreement custodial responsibility is shared by the other parent and a nonparent, or by other nonparents, provide a process to resolve any dispute that may arise;

(6) specify the frequency, duration, and means, including electronic means, by which the deploying parent will have contact with the child, any role to be played by the other parent in facilitating the contact, and the allocation of any costs of contact;

(7) specify the contact between the deploying parent and child during the time the deploying parent is on leave or is otherwise available;

(8) acknowledge that any party's child-support obligation cannot be modified by the agreement, and that changing the terms of the obligation during deployment requires modification in the appropriate court;

(9) provide that the agreement will terminate according to the procedures under Article 4 after the deploying parent returns from deployment; and

(10) if the agreement must be filed pursuant to § 9-21-205, specify which parent is required to file the agreement.

(d) The omission of any of the items specified in subsection (c) does not invalidate an agreement under this section.

History. Acts 2015, No. 1213, § 1.

9-21-202. Nature of authority created by agreement.

(a) An agreement under this Article is temporary and terminates pursuant to Article 4 after the deploying parent returns from deployment, unless the agreement has been terminated before that time by court order or modification under § 9-21-203. The agreement does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom custodial responsibility is given.

(b) A nonparent who has caretaking authority, decision-making authority, or limited contact by an agreement under this Article has standing to enforce the agreement until it has been terminated by court order, by modification under § 9-21-203, or under Article 4.

History. Acts 2015, No. 1213, § 1.

9-21-203. Modification of agreement.

(a) By mutual consent, the parents of a child may modify an agreement regarding custodial responsibility made pursuant to this Article.

(b) If an agreement is modified under subsection (a) before deployment of a deploying parent, the modification must be in writing and signed by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

(c) If an agreement is modified under subsection (a) during deployment of a deploying parent, the modification must be agreed to in a

record by both parents and any nonparent who will exercise custodial responsibility under the modified agreement.

History. Acts 2015, No. 1213, § 1.

9-21-204. Power of attorney.

A deploying parent, by power of attorney, may delegate all or part of custodial responsibility to an adult nonparent for the period of deployment if no other parent possesses custodial responsibility under law of this state other than this chapter, or if a court order currently in effect prohibits contact between the child and the other parent. The deploying parent may revoke the power of attorney by signing a revocation of the power.

History. Acts 2015, No. 1213, § 1.

9-21-205. Filing agreement or power of attorney with court.

An agreement or power of attorney under this Article must be filed within a reasonable time with any court that has entered an order on custodial responsibility or child support that is in effect concerning the child who is the subject of the agreement or power. The case number and heading of the pending case concerning custodial responsibility or child support must be provided to the court with the agreement or power.

History. Acts 2015, No. 1213, § 1.

ARTICLE 3

JUDICIAL PROCEDURE FOR GRANTING CUSTODIAL RESPONSIBILITY DURING DEPLOYMENT

SECTION.

- 9-21-301. Definition.
- 9-21-302. Proceeding for temporary custody order.
- 9-21-303. Expedited hearing.
- 9-21-304. Testimony by electronic means.
- 9-21-305. Effect of prior judicial order or agreement.
- 9-21-306. Grant of caretaking or decision-making authority to nonparent.

SECTION.

- 9-21-307. Grant of limited contact.
- 9-21-308. Nature of authority created by temporary custody order.
- 9-21-309. Content of temporary custody order.
- 9-21-310. Order for child support.
- 9-21-311. Modifying or terminating grant of custodial responsibility to nonparent.

9-21-301. Definition.

In this Article, “close and substantial relationship” means a relationship in which a significant bond exists between a child and a nonparent.

History. Acts 2015, No. 1213, § 1.

9-21-302. Proceeding for temporary custody order.

(a) After a deploying parent receives notice of deployment and until the deployment terminates, a court may issue a temporary order granting custodial responsibility unless prohibited by the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3931 and 3932. A court may not issue a permanent order granting custodial responsibility without the consent of the deploying parent.

(b) At any time after a deploying parent receives notice of deployment, either parent may file a motion regarding custodial responsibility of a child during deployment. The motion must be filed in a pending proceeding for custodial responsibility in a court with jurisdiction under § 9-21-104 or, if there is no pending proceeding in a court with jurisdiction under § 9-21-104, in a new action for granting custodial responsibility during deployment.

History. Acts 2015, No. 1213, § 1.

9-21-303. Expedited hearing.

If a motion to grant custodial responsibility is filed under § 9-21-302(b) before a deploying parent deploys, the court shall conduct an expedited hearing.

History. Acts 2015, No. 1213, § 1.

9-21-304. Testimony by electronic means.

In a proceeding under this Article, a party or witness who is not reasonably available to appear personally may appear, provide testimony, and present evidence by electronic means unless the court finds good cause to require a personal appearance.

History. Acts 2015, No. 1213, § 1.

9-21-305. Effect of prior judicial order or agreement.

In a proceeding for a grant of custodial responsibility pursuant to this Article, the following rules apply:

(1) A prior judicial order designating custodial responsibility in the event of deployment is binding on the court unless the circumstances meet the requirements of law of this state other than this chapter for modifying a judicial order regarding custodial responsibility.

(2) The court shall enforce a prior written agreement between the parents for designating custodial responsibility in the event of deployment, including an agreement executed under Article 2, unless the court finds that the agreement is contrary to the best interest of the child.

History. Acts 2015, No. 1213, § 1.

9-21-306. Grant of caretaking or decision-making authority to nonparent.

(a) On motion of a deploying parent and in accordance with law of this state other than this chapter, if it is in the best interest of the child, a court may grant caretaking authority to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship.

(b) Unless a grant of caretaking authority to a nonparent under subsection (a) is agreed to by the other parent, the grant is limited to an amount of time not greater than:

(1) the amount of time granted to the deploying parent under a permanent custody order, but the court may add unusual travel time necessary to transport the child; or

(2) in the absence of a permanent custody order that is currently in effect, the amount of time that the deploying parent habitually cared for the child before being notified of deployment, but the court may add unusual travel time necessary to transport the child.

(c) A court may grant part of a deploying parent's decision-making authority, if the deploying parent is unable to exercise that authority, to a nonparent who is an adult family member of the child or an adult with whom the child has a close and substantial relationship. If a court grants the authority to a nonparent, the court shall specify the decision-making powers granted, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel.

History. Acts 2015, No. 1213, § 1.

9-21-307. Grant of limited contact.

On motion of a deploying parent, and in accordance with law of this state other than this chapter, unless the court finds that the contact would be contrary to the best interest of the child, a court shall grant limited contact to a nonparent who is a family member of the child or an individual with whom the child has a close and substantial relationship.

History. Acts 2015, No. 1213, § 1.

9-21-308. Nature of authority created by temporary custody order.

(a) A grant of authority under this Article is temporary and terminates under Article 4 after the return from deployment of the deploying parent, unless the grant has been terminated before that time by court order. The grant does not create an independent, continuing right to caretaking authority, decision-making authority, or limited contact in an individual to whom it is granted.

(b) A nonparent granted caretaking authority, decision-making authority, or limited contact under this Article has standing to enforce the grant until it is terminated by court order or under Article 4.

History. Acts 2015, No. 1213, § 1.

9-21-309. Content of temporary custody order.

(a) An order granting custodial responsibility under this Article must:

- (1) designate the order as temporary; and
- (2) identify to the extent feasible the destination, duration, and conditions of the deployment.

(b) If applicable, an order for custodial responsibility under this Article must:

(1) specify the allocation of caretaking authority, decision-making authority, or limited contact among the deploying parent, the other parent, and any nonparent;

(2) if the order divides caretaking or decision-making authority between individuals, or grants caretaking authority to one individual and limited contact to another, provide a process to resolve any dispute that may arise;

(3) provide for liberal communication between the deploying parent and the child during deployment, including through electronic means, unless contrary to the best interest of the child, and allocate any costs of communications;

(4) provide for liberal contact between the deploying parent and the child during the time the deploying parent is on leave or otherwise available, unless contrary to the best interest of the child;

(5) provide for reasonable contact between the deploying parent and the child after return from deployment until the temporary order is terminated, even if the time of contact exceeds the time the deploying parent spent with the child before entry of the temporary order; and

(6) provide that the order will terminate pursuant to Article 4 after the deploying parent returns from deployment.

History. Acts 2015, No. 1213, § 1.

9-21-310. Order for child support.

If a court has issued an order granting caretaking authority under this Article, or an agreement granting caretaking authority has been executed under Article 2, the court may enter a temporary order for child support consistent with law of this state other than this chapter if the court has jurisdiction under the Uniform Interstate Family Support Act, § 9-17-101 et seq.

History. Acts 2015, No. 1213, § 1.

9-21-311. Modifying or terminating grant of custodial responsibility to nonparent.

(a) Except for an order under § 9-21-305, except as otherwise provided in subsection (b), and consistent with the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3931 and 3932, on motion of a deploying or other parent or any nonparent to whom caretaking authority, decision-making authority, or limited contact has been granted, the court may modify or terminate the grant if the modification or termination is consistent with this Article and it is in the best interest of the child. A modification is temporary and terminates pursuant to Article 4 after the deploying parent returns from deployment, unless the grant has been terminated before that time by court order.

(b) On motion of a deploying parent, the court shall terminate a grant of limited contact.

History. Acts 2015, No. 1213, § 1.

ARTICLE 4**RETURN FROM DEPLOYMENT****SECTION.**

- 9-21-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.
- 9-21-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

SECTION.

- 9-21-403. Visitation before termination of temporary grant of custodial responsibility.
- 9-21-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

9-21-401. Procedure for terminating temporary grant of custodial responsibility established by agreement.

(a) At any time after return from deployment, a temporary agreement granting custodial responsibility under Article 2 may be terminated by an agreement to terminate signed by the deploying parent and the other parent.

(b) A temporary agreement under Article 2 granting custodial responsibility terminates:

- (1) if an agreement to terminate under subsection (a) specifies a date for termination, on that date; or
- (2) if the agreement to terminate does not specify a date, on the date the agreement to terminate is signed by the deploying parent and the other parent.

(c) In the absence of an agreement under subsection (a) to terminate, a temporary agreement granting custodial responsibility terminates under Article 2 sixty (60) days after the deploying parent gives notice to the other parent that the deploying parent returned from deployment.

(d) If a temporary agreement granting custodial responsibility was filed with a court pursuant to § 9-21-205, an agreement to terminate

the temporary agreement also must be filed with that court within a reasonable time after the signing of the agreement. The case number and heading of the case concerning custodial responsibility or child support must be provided to the court with the agreement to terminate.

History. Acts 2015, No. 1213, § 1.

9-21-402. Consent procedure for terminating temporary grant of custodial responsibility established by court order.

At any time after a deploying parent returns from deployment, the deploying parent and the other parent may file with the court an agreement to terminate a temporary order for custodial responsibility issued under Article 3. After an agreement has been filed, the court shall issue an order terminating the temporary order effective on the date specified in the agreement. If a date is not specified, the order is effective immediately.

History. Acts 2015, No. 1213, § 1.

9-21-403. Visitation before termination of temporary grant of custodial responsibility.

After a deploying parent returns from deployment until a temporary agreement or order for custodial responsibility established under Article 2 or 3 is terminated, the court shall issue a temporary order granting the deploying parent reasonable contact with the child unless it is contrary to the best interest of the child, even if the time of contact exceeds the time the deploying parent spent with the child before deployment.

History. Acts 2015, No. 1213, § 1.

9-21-404. Termination by operation of law of temporary grant of custodial responsibility established by court order.

(a) If an agreement between the parties to terminate a temporary order for custodial responsibility under Article 3 has not been filed, the order terminates sixty (60) days after the deploying parent gives notice to the other parent and any nonparent granted custodial responsibility that the deploying parent has returned from deployment.

(b) A proceeding seeking to prevent termination of a temporary order for custodial responsibility is governed by law of this state other than this chapter.

History. Acts 2015, No. 1213, § 1.

ARTICLE 5**MISCELLANEOUS PROVISIONS****SECTION.**

9-21-501. Uniformity of application and construction.

9-21-502. Relation to Electronic Signatures in Global and National Commerce Act.

SECTION.

9-21-503. Savings clause.

9-21-504. [Reserved.]

9-21-501. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History. Acts 2015, No. 1213, § 1.

9-21-502. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

History. Acts 2015, No. 1213, § 1.

9-21-503. Savings clause.

This chapter does not affect the validity of a temporary court order concerning custodial responsibility during deployment which was entered before July 22, 2015.

History. Acts 2015, No. 1213, § 1.

9-21-504. [Reserved.]

A.C.R.C. Notes. Uniform Deployed Parents Custody and Visitation Act, § 1, which was not adopted in Arkansas, is an effective date provision.

CHAPTERS 22-24

[Reserved.]

TITLE 9, SUBTITLE 2 — APPENDIX
ADMINISTRATIVE ORDER NUMBER 10 — CHILD
SUPPORT GUIDELINES

The Per Curiam Orders of the Supreme Court of Arkansas of February 5, 1990, May 13, 1991, and October 25, 1993, established guidelines for child support enforcement. The Per Curiam Order of September 25, 1997, established Administrative Order Number 10, establishing guidelines effective October 1, 1997. Administrative Order Number 10 was republished in the Per Curiam Order of January 22, 1998, making minor corrections to the child-support charts and to the Affidavit of Financial Means. The Per Curiam Order of January 31, 2002, made further amendments which included and incorporated by reference the revised weekly and monthly family-support charts and the revised Affidavit of Financial Means effective February 11, 2002. The Per Curiam Order of April 26, 2007, included revised weekly and monthly support charts and Affidavit of Financial Means and added new biweekly and semimonthly charts effective May 3, 2007. The Per Curiam Order of June 14, 2007, was issued to correct errors in the attachments included in the Per Curiam Order of April 26, 2007. Administrative Order Number 10 as revised by the Per Curiam Order of June 14, 2007, was set out in this appendix for easy reference and included the weekly, biweekly, semimonthly, and monthly support charts and the Affidavit of Financial Means. The Per Curiam Order of February 3, 2011, included revisions to Section II to add a provision which included a percentage of a future bonus within the definition of “income”. The Per Curiam Order of September 15, 2016, included the revised Affidavit of Financial Means, effective October 10, 2016. The Per Curiam Order of April 2, 2020, revised all of Administrative Order No. 10. Effective immediately, the new guidelines may be used as an alternative to the former version. The new version should be used for all support orders entered after June 30, 2020.

PER CURIAM: “On April 26, 2007, this court handed down a per curiam order regarding Administrative Order No. 10 — Arkansas Child Support Guidelines, which included the following attachments to the order: (1) a revised Administrative Order No. 10, (2) revised Child Support Charts (weekly, biweekly, monthly, and bimonthly), and (3) a revised Affidavit of Financial Means. These attachments had errors in them. This per curiam order amends and corrects Administrative Order No. 10, the Biweekly Child Support Chart and the Affidavit of Financial Means.

“Administrative Order No. 10 is amended in Section III, Calculation of Support, in subsection ‘b,’ Income Which Exceeds Chart. A new Example is provided for computing child support when income exceeds

the chart. The maximum weekly income in the example now conforms to the maximum weekly income on the revised chart.

"Section III is also amended in subsection 'c,' Nonsalaried payors, to update military terminology for 'quarters allowance' and to add subsistence allowance as a component of total income for military personnel.

"Two of the four Family Support Charts have been amended. The Biweekly Child Support Chart skipped from 'Payor Net Biweekly Income' of \$290 to \$400. The Chart has been corrected. The 'bimonthly' chart is renamed the 'Semimonthly' Family Support Chart, and all references to 'bimonthly' have been changed to 'semimonthly' in the administrative order and in the affidavit.

"A new Affidavit of Financial Means is substituted, renumbered to correct errors in numbering in the one published originally. Substantive changes include a request for three pay stubs to be attached to the affidavit after section 1.c. There are additions for clarification about income in sections 4.a. and 4.d., and about the children being supported in section 5.b. 'Health insurance' was added to the list of monthly expenses as section 'm.' The term 'legally determined illegitimate children' was replaced with 'legally legitimated children' in section 23.i. After that section is a new instruction to repeat the 'net pay' information on separate attachments for other salaried positions.

"We republish the April 26, 2007, per curiam order and substitute all attachments, (1) revised Administrative Order No. 10, (2) revised Child Support Charts, and (3) the revised Affidavit of Financial Means[:] PER CURIAM On February 5, 1990, this court first adopted guidelines for child support in response to P.L. 100-485 and Ark. Code Ann. § 9-12-312(a). Effective October, 1989, P.L. 100-485 required that all states adopt guidelines for setting child support; that it be a rebuttable presumption that the amount of support calculated from the child-support chart is correct; and that each state's guidelines be reviewed and revised, as necessary, at least every four years. In response to the federal law, the Arkansas General Assembly enacted Ark. Code Ann. § 9-12-312, which included the federal provision and authorized the Arkansas Supreme Court to develop guidelines based on recommendations submitted to the court by a committee appointed by the Chief Justice. The Arkansas Supreme Court Committee on Child Support initially made recommendations to the court that formed the substance of a 1990 per curiam order. On May 13, 1991, pursuant to the committee's recommendations, the court issued a new per curiam to supplement the original.

"In compliance with the four-year requirement of P.L. 100-485, the committee has submitted periodic reports and recommendations to the court since 1990. On October 23, 1993, the court issued a per curiam

order and adopted guidelines that were published in the Court Rules Volume of the Arkansas Code Annotated. On September, 1997, the court issued a per curiam and adopted the recommendations of the child support committee. At that time, the court adopted and published Administrative Order Number 10 — Arkansas Child Support Guidelines, effective October 1, 1997. The Administrative Order incorporated by reference weekly and monthly family support charts and the Affidavit of Financial Means. On January 22, 1998, the court entered a per curiam and republished Administrative Order Number 10, making minor corrections to the child support charts and to the Affidavit of Financial Means.

“The last revision following the child support committee’s periodic review was on January 31, 2002. By a per curiam order, the court adopted and republished Administrative Order Number 10 — Arkansas Child Support Guidelines, effective February 11, 2002, which incorporated by reference the weekly and monthly family support charts and the Affidavit of Financial Means. The committee has continued to study the existing guidelines, pursuant to federal and state law. Once again, the committee submitted a report to the court, including recommendations for revisions to the Administrative Order, the guidelines and the Affidavit of Financial Means.

“Having carefully considered these most recent recommendations, the court adopts and publishes revised Administrative Order Number 10 — Arkansas Child Support Guidelines, effective May 3, 2007. This Administrative Order includes and incorporates by reference revised weekly and monthly support charts and adds new biweekly and bimonthly charts. The Affidavit of Financial Means has been substantially revised and is also included and incorporated by reference into Administrative Order Number 10.

“The court thanks the committee for its service, and as it has done in the past, directs the committee and the Chief Justice, as its liaison, to continue its charge pursuant to law and the rules of this court.”

SECTION I. AUTHORITY AND SCOPE

Pursuant to Act 948 of 1989, as amended, codified at Ark. Code Ann. § 9-12-312(a) and the Family Support Act of 1988, Pub. L. No. 100-485 (1988), the Court adopted and published Administrative Order Number 10, titled “Child Support Guidelines” (“Guidelines”). Pursuant to Act 907 of 2019, codified at Ark. Code Ann. § 9-12-312(a)(4), the attached revised monthly “Family Support Chart” (“Chart”) is based on an Income Shares Model. The attached Chart therefore supersedes any prior payor-income-based family support chart. (Section II.1 discusses when this Administrative Order’s incorporation of the Income Shares Model affects existing child-support orders.) This Administrative Order includes and incorporates by reference the “Forms” Adden-

dum: Sample Calculation, Sample Language for Child-Support Orders, Family Support Chart, Child Support Worksheet (“Worksheet”), and the revised Affidavit of Financial Means.

These Guidelines are based on the Income Shares Model, developed by the Child Support Guidelines Project of the National Center for State Courts. The Income Shares Model is based on the concept that children should receive the same proportion of parental income that they would have received had the parents lived together and shared financial resources. The best available economic data on child-rearing expenditures was used to develop the model. A more detailed explanation of the Income Shares Model and the underlying economic evidence used to support it is contained in *Development of Guidelines for Child Support Orders*, Report to the Federal Office of Child Support Enforcement, September 1987 (National Center for State Courts, Denver, Colorado). The September 2019 Review of the Arkansas Child Support Guidelines, an Analysis of Economic Data, Development of Income Shares Charts, and Other Considerations, prepared by Jane Venohr, Ph.D., is available at www.arcourts.gov/forms-and-publications/arkansas-child-support-guidelines.

Under the revised Family Support Chart, each parent’s share is that parent’s prorated share of the two parents’ combined income. The Chart reflects the average amount of money that families in the United States spend on their children. Differences between Arkansas prices and prices across the United States more generally have been accounted for using an index that the U.S. Bureau of Economic Analysis (BEA) developed. The Chart also considers and accounts for:

- federal and state income taxes and FICA;
- average child-rearing expenditures using current measurements developed by Professor David Betson using the Rothbarth methodology to separate the children’s share of expenditures from total expenditures;
- out-of-pocket medical expenses of \$250.00 per child per year.

The Chart excludes parental expenditures for work-related childcare, the child’s share of health insurance premiums, and out-of-pocket medical expenses over \$250.00 per child per year.

These Guidelines and the accompanying Worksheet assume that the parent to whom support is owed (payee parent) is spending his or her calculated share directly on the child. For the parent with the obligation to pay support (payor parent), the pro-rata charted amount establishes the base level of child support to be given to the payee parent. The base amount may, however, be adjusted to account for work-related childcare expenditures, the child’s share of the health insurance premium, out-of-pocket medical expenses exceeding \$250.00 per child per year, the self-support reserve, or other factors a court determines to be in the best interest of a child or children.

SECTION II. USE OF THE GUIDELINES

There is a rebuttable presumption that the amount of child support calculated pursuant to the most recent revision of the Family Support Chart and these Guidelines is the amount to be awarded in any judicial proceeding for divorce, separation, paternity, guardianship, or child support.

In addition to an initial award for child support or the modification of an existing obligation, these Guidelines should be used to assess the adequacy of agreements for child support and to encourage parties to settle support-related disputes in a comprehensive manner.

These Guidelines provide calculated amounts of child support for a combined parental gross income of up to \$30,000.00 per month, or \$360,000.00 per year. The child-support obligation for incomes above \$30,000.00 per month shall be determined by using the highest amount in these Guidelines. The court may then use its discretion in setting an amount above that to meets the needs of the child and the parent's ability to provide support.

These Guidelines assume that the payor parent has the minor child(ren) overnight in his or her residence less than 141 overnights per calendar year.¹

1. Modification of Existing Child-Support Obligation:

Pursuant to Act 904 of 2019, codified at Arkansas Code Annotated § 9-14-107(c)(2), “an inconsistency between the existing child-support award and the amount of child support that results from application of the Family Support Chart shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the Family Support Chart after appropriate deductions unless:

a. The inconsistency does not meet a reasonable quantitative standard established by the State of Arkansas in accordance with subsection (a) of this section;

b. The inconsistency is due to the fact that the amount of the current child support award resulted from a rebuttal of the guideline amount and there has not been a change of circumstances that resulted in the rebuttal of the guidelines amount; or

c. The inconsistency is due solely to a promulgation to a revision of the Family Support Chart.”²

2. Deviation from the Chart:

All orders granting or modifying child support shall contain the court's determination of the payor's income, payee's income, recite the amount of support required under these Guidelines, and state whether the court deviated from the presumptive child-support calculation set by the Worksheet and these Guidelines. If an order deviates from the Guidelines amount, then the order must explain the reason(s) for the

¹This Administrative Order presumes that a traditional visitation schedule will be less than 141 nights while a liberal visitation schedule is usually more than 141 nights.

²The Section titled “Modification of Existing Child-Support Order” recites verbatim Arkansas Code Annotated 9-14-107(c)(2).

deviation. When deciding whether the Worksheet-based amount is unjust or inappropriate, the court must consider all the relevant factors, including what is in the child's or children's best interest. A deviation from these Guidelines should be the exception rather than the rule. If a court chooses to deviate from the Guidelines amount, then it must make written findings and explain the deviation. It shall be sufficient in a particular case to rebut the presumption that the amount of child support calculated pursuant to the Worksheet is correct if the court provides in the order a specific written finding that the Worksheet-based amount is unjust or inappropriate. When determining whether to deviate from the Guidelines' amount, a court should consider the following:

- a. Educational expenses for the child(ren) (i.e., those incurred for private or parochial schools, or other schools where there are tuition or related costs) and/or the provision or payment of special education needs or expenses for the child(ren);
- b. The procurement and/or maintenance of life insurance, dental insurance, and/or other insurance for the children's benefit (for health insurance premiums, see Section II.2 *infra*);
- c. Extraordinary travel expenses for court-ordered visitation;
- d. Significant available income of the child(ren);
- e. The creation or maintenance of a trust fund for the children;
- f. The support given by a parent for minor children in the absence of a court order;
- g. Extraordinary time spent with the payor parent;
- h. Additional expenses incurred because of natural or adopted children living in the home, including stepchildren if the court finds there is a court-ordered responsibility to a stepchild;
- i. The provision for payment of work-related childcare, extraordinary medical expenses for the child in excess of \$250.00 per year per child, and/or health insurance premiums. Ordinarily, these expenses will be divided pro rata between the parents and added to the base child support of the payor parent on the Worksheet. In that scenario, it shall not support a deviation. However, if the court chooses not to add them in the total child-support obligation, they could support a deviation; and
- j. Any other factors that warrant a deviation.

3. Self-Support Reserve, Minimum Order, and Deviation from the Minimum Order:

In cases where the payor parent's monthly gross income is less than \$900.00, the Chart applies a self-support reserve (SSR). The SSR considers the basic subsistence needs of the payor parent and is based on the Federal Poverty Guidelines multiplied by Arkansas's price parity. Arkansas's price parity is the index used to adjust the Chart to reflect Arkansas prices. If the payor parent's child-support amount pursuant to the chart is based solely on the payor parent's gross income and corresponding number of children falls within the shaded area of the Chart, then the basic child-support obligation and the payor parent's total child-support obligation are computed using only the

payor parent's income. In these cases, health insurance premiums, extraordinary medical expenses, and childcare expenses shall not be used to calculate the total child-support obligation. However, payment of these costs by either parent may be used as a reason to deviate from these Guidelines.

When the payor parent's monthly gross income is less than \$900.00, a presumptive minimum award of \$125.00 per month must issue unless a party can rebut the presumptive amount by a preponderance of the evidence. Some factors that a court may consider when deciding whether a party has rebutted the minimum order amount include but are not limited to the following:

- a. There is a large adjustment due to parenting time;
- b. The payor is incarcerated (see Section II.4 below);
- c. The payor is institutionalized due to a mental illness or other impairment;
- d. The payor has a verified physical disability that precludes work;
- e. The payor's only income is Supplemental Security Income (SSI);
- f. The payor's ability or inability to work; or
- g. Any other deviation factor listed above in Subsection II.2 or any income imputation factor listed below in Section III.7.

4. Incarcerated Individuals

Pursuant to Act 904 of 2019, codified at Arkansas Code Annotated § 9-12-312(a), § 9-14-106(a), and § 9-14-107(a), the incarceration of a parent shall be treated as involuntary unemployment for the purpose of establishing or modifying an award of child support. "Incarceration" means a conviction that results in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least 180 days and excludes credit for time served before sentencing.

SECTION III. GROSS INCOME

1. Definitions:

"Income" means the actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed as allowed under Section III.7. Gross income is used to avoid disputes over issues of deductibility that would arise if a net income was used.

These Guidelines presume that the parent with the legal obligation to pay support will file federal taxes as a single individual and have only one state exemption. Adjustments have been made in the Chart for federal and state income taxes, FICA, and average child-rearing expenditures (for example, out-of-pocket medical expenses of \$250.00 per child per year).

The monthly child-support amount shall be converted to coincide with the payor's receipt of salary, wages, or other income. For purposes of computing gross monthly income, a month is 4.334 weeks. Bi-weekly means a party is paid once every two weeks, or 26 times during a calendar year. Semi-monthly means a person is paid twice a month, or 24 times per calendar year.

“Child Support Gross Income” means gross income—minus amounts for preexisting child-support obligations paid to another who is not a party to the proceedings and on behalf of a child who is not the subject of the action of the court. Child support arrearage payments shall not be considered in determining a payor’s gross income.

“Combined Gross Income” means the combined gross income of both parties.

2. Gross Income Inclusions:

“Income” is “intentionally broad and designed to encompass the widest range of sources consistent with the State’s policy to interpret ‘income’ broadly for the benefit of the child.” *Evans v. Tillery*, 361 Ark. 63, 204 S.W.3d 547 (2005); *Ford v. Ford*, 347 Ark. 485, 65 S.W.3d 432 (2002); *McWhorter v. McWhorter*, 346 Ark. 475, 58 S.W.3d 840 (2001); *Davis v. Office of Child Support Enforcement*, 341 Ark. 349, 20 S.W. 3d 273 (2000).

Gross income includes, but is not limited to, the following:

i. Wages, overtime pay, commissions, regularly-received bonuses, or other monies from all employers or as a result of any employment (as usually reported in the Medicare, wages, and tips section of the parent’s W-2).

ii. Earnings generated from a business, partnership, contract, self-employment or other similar arrangement, or from rentals.

(a) Income (or losses) from a corporation should be carefully examined to determine the extent to which they were historically passed on to the parent or used merely as a tax strategy.

iii. Distributed profits or payments from profit-sharing, a pension or retirement, an insurance contract, an annuity, trust fund, deferred compensation, retirement account, social security disability payments, social security retirement payments, unemployment compensation, supplemental unemployment benefits, disability insurance or benefits, or worker’s compensation.

(a) Consider insurance or other similar payments received as compensation for lost earnings, but do not include payments that compensate for actual medical bills or for property loss or damage.

(b) If a parent receives payments from an IRA, defined contribution, or deferred compensation plan, income does not include contributions to that account that were previously considered as the parent’s income used to calculate an earlier child-support obligation for a child in this case. To the extent that the funds received are equivalent to the amount of the funds contributed by the parent while paying child support, that amount should be excluded from the computation of gross income.

iv. Military specialty pay, allowance for quarters and rations, housing, veterans’ administration benefits, G.I. benefits (other than education allotment), or drill pay.

(a) If the servicemember receives housing pay and supports another home (i.e. second residence), housing pay is not considered

income to the individual.

- v. Tips, gratuities, royalties, interest, dividends, fees, or gambling or lottery winnings.
- vi. Capital gains to the extent that they result from recurring transactions.
- vii. The standard (basic needs) portion of adoption subsidies for children in the case under consideration (do not consider the medical needs and intensive rate portion of the subsidy, nor the family support subsidy as income).
- viii. Any money or income due or owed by another individual, source of income, government, or other legal entity.
- ix. Income also includes the market value of perquisites (perks) received as goods, services, or other noncash benefit for which the parent did not pay, if they reduce personal expenses, and have significant value or are received regularly.
 - (a) Common forms of perquisites (perks) or goods and services received in-kind include, but are not limited to, the following: housing, meals, or room and board, personal use of a company business vehicle or mileage reimbursement, including use between home and primary worksite, and other goods or services.
 - (b) Perquisites (perks) do not include money paid by an employer for benefits like tuition reimbursement, educational cost reimbursement, uniforms, and health savings account (HSA) contributions.
- x. The court may consider assets available to generate income for child support. For example, the court may determine the reasonable earning potential of any asset at its market value and assess against it the current Treasury bill interest rate or some other similar appropriate method of computing income.

To further this State's policy of interpreting "income" broadly for the benefit of children, a support order may include as its basis a percentage of a bonus to be paid in the future. The child support attributable to a bonus amount (or another one-time source of money) shall be in addition to the periodic child-support obligation. This child-support obligation shall terminate when the underlying child-support obligation terminates. Variable income such as commissions, bonuses, overtime pay, military bonuses, and dividends shall be averaged by the court over a reasonable period of time consistent with the circumstances of the case and added to a parent's fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring, or one-time basis, the court may, but is not required to, average or prorate the income over a reasonable specified period of time or require the parent to pay as a one-time support amount a percentage of his or her nonrecurring income.

One-time sources of money like an inheritance, gambling or lottery winning, or liquidating a Certificate of Deposit, for example, is income for these Guidelines purposes (as detailed in the previous paragraph). If the receipt of an asset is not sold or otherwise disposed of, however, then it has not "realized a gain" and therefore is not income under these Guidelines.

3. Income from Self-employment, Business Owners, Executives, and Others

a. Difficulty in determining income for self-employed individuals, business owners, and others occurs for several reasons including:

- i. These individuals often have types of income and expenses not frequently encountered when determining income for most people.
- ii. Taxation rules, business records, and forms associated with business ownership and self-employment differ from those that apply to individuals employed by others. Common business documents reflect policies unrelated to an obligation to support one's child.
- iii. Due to the control that business owners or executives exercise over the form and manner of their compensation, a parent, or a parent with the cooperation of a business owner or executive, may arrange compensation to reduce the amount visible to others looking for common forms of income.

b. To determine monies that a parent has available for support, it may be necessary to examine business tax returns, balance sheets, accounting or banking records, and other business documents to identify additional monies a parent has available for support that were not included as personal income. At a minimum, a self-employed parent shall provide their two most recent years of state and federal tax returns. The parent should provide three years of tax returns when there is a reduced, deferred, or elective income situation. Unless otherwise prohibited by law, the court may award expert witness fees when necessary to determine self-employed parent's income.

c. For income from self-employment, proprietorship of a business, or ownership or a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation, including an employer's share of FICA. However, the court should exclude from those expenses amounts allowed by the Internal Revenue Service for accelerated depreciation of investment tax credits for purposes of these Guidelines and add those amounts back in to determine gross income. In general, the court should carefully review income and expenses from a parent's self-employment or operation of a business to determine actual levels of gross income available to the parent. The court's duty is to accurately determine a child-support obligation in every case. This amount may differ from the determination of business income for tax purposes.

d. Whether organized informally, or as a corporation, a partnership, a sole proprietorship, or other arrangement or entity, these considerations apply to all forms of self-employment and business ownership, as well as to business executives and others who may receive similar forms of compensation.

e. For purposes of this subsection, income includes amounts that were not otherwise included as income elsewhere in this chapter. Special attention shall be given to the following forms of compensation:

- i. Distributed profits, profit sharing, officers' fees and other compen-

sation, management or consulting fees, commissions, and bonuses.

- ii. In-kind income or perquisites (perks), gifts, free admission to entertainment, or personal use of business property. The value of these items must be based on a fair-market price, that is, the price a person not affiliated with the business would pay. In-kind payments received by a parent from self-employment or the operation of a business is income if the payments are significant and reduce personal living expenses.

f. Redirected income, or amounts treated by the business or company as if the redirected amounts were something other than the parent's income. Amounts include, but are not limited to, the following:

- i. *Personal loans.* Presume personal loans from a business are in fact redirected income, unless all the following are true: (1) the parent signed a contract or promissory note outlining the terms of the loan, (2) the business maintains records showing the loan owed as a receivable, (3) the parent makes installment payments and the present loan is paid current, and (4) the interest earned and repayment rate appear to be a reasonable business practice. Unless the presumption is overcome by a preponderance of the evidence, then a parent's income includes the difference between the amount the parent repays and a repayment amount for a similar commercially available unsecured personal loan.

- ii. *Payments made to friends or relatives of the parent.* If the business cannot demonstrate that the payments are equivalent to a fair market value payment for the work or services the friend or relative performs, then include any amount that exceeds the fair-market value as the parent's income.

g. *Reduced or deferred income.* Because a parent's compensation can be rearranged to hide income, determine whether unnecessary reductions in salaries, fees, or distributed profits have occurred by comparing amounts and rates to historical patterns.

- i. Unless the business can demonstrate legitimate reasons for a substantial reduction in the percentage of distributed profits, use a three-year average to determine the amount to include as a parent's income.
- ii. Unless a business can demonstrate legitimate reasons for reductions (as a percentage of gross business income) in salaries, bonuses, management fees, or other amounts paid to a parent, use a three-year average to determine the amount to include as a parent's income.

h. *Business income subject to elective treatment.* Income that is subject to elective status (for example, retained income) may be considered as income after the court considers the circumstances and history of the elective treatment, which includes but is not limited to the status prior to the implementation of the support order. If a change in the status was made after the original election, then a court can either choose to include the income in child-support calculations or not include it in the calculations.

i. *Deductions for Tax Purposes.* For a variety of historical and policy reasons, the government allows considerable deductions for business-related expenses before taxes are calculated. Those same considerations are not always relevant to monies a parent should have available for child support. Therefore, some deductions should be added back into a parent's income for purposes of determining child support. The deductions include, but are not limited to, the following:

- i. Rent paid by the business to the parent, if it is not counted as income on that parent's personal tax return.
- ii. Real estate depreciation shall always be added back into a parent's income when calculating support.
- iii. Depreciation figured at a straight-line (not accelerated) rate on a parent's (not a corporation's or partnership's) tangible personal property, other than for personal vehicles or home offices, shall be deducted from income. Any parent who uses accelerated depreciation for tangible personal property may deduct the value of the straight-line depreciation amount for property other than personal vehicles or home offices, if the parent proves what the straight-line amounts would have been.
- iv. Home office expenses, including rent, hazard insurance, utilities, repairs, and maintenance.
- v. Entertainment expenses spent by the parent. Legitimate expenses for customers' entertainment may be treated as deductions.
- vi. Travel expense reimbursements, except where such expenses are inherent in the nature of the business or occupation (for example, a traveling salesperson), and do not exceed the standard rates allowed by the State of Arkansas for employee travel.
- vii. Personal automobile repair and maintenance expenses.

4. Gross Income Exclusions:

Gross income does not include benefits received from means-tested public assistance programs, such as Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI) received for self or any child; Food Stamps and General Assistance; income derived by other household members; child support, adoption subsidy payments, and foster care board payments received for other children not involved in the case.

5. Spousal Support:

If a parent paying spousal support also pays child support to the same person, then the amount of alimony a former payee spouse may be receiving shall be reduced from the payor's gross income and added to the payee's gross income for purposes of determining income under the child-support calculation.

6. Other Child Support Paid:

Any previous or existing court orders requiring the payment of current child support shall receive priority over any subsequent child-support obligation. A subsequent support obligation shall not constitute the sole basis for a material change of circumstances sufficient to support a petition to the court for modification of a prior child-support

order.

Current child support paid for the benefit of children other than those considered in this computation, to the extent such payment or payments are required by a previous court order, shall be deducted from gross income. Child support arrearage payments shall not be considered in determining a payor's gross income.

7. Income Verification:

The Affidavit of Financial Means and Worksheet shall be used in all family-support matters. Each party shall exchange the Affidavit of Financial Means and Worksheet at least three days before a hearing to establish or modify a support order. The Worksheet shall be filed in the court file and attached to the order that includes the child-support award. The Affidavit of Financial Means shall not be filed in the court file.

A court may rely on suitable documentation of current earnings, preferably for at least one month. Suitable documentation includes, but is not limited to, pay stubs, employer statements or verifications, and receipts and expenses if the parent is self-employed.

Verification of current earnings, whether they are reflected on the Affidavit of Financial Means or not, can be supported with copies of the most recent federal and state tax returns that a parent has filed.

Income can also be verified through the Department of Workforce Services or through the Department of Finance and Administration.

8. Income Imputation Considerations:

If imputation of income is ordered, the court must take into consideration the specific circumstances of both parents, to the extent known, including such factors as the parents' assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case.

There is a rebuttable presumption that the payor and the payee can work full-time or earn full-time income, and the court may calculate child support based on a determination of potential income that would otherwise ordinarily be available to the parties.

The court may consider a disability or the presence of young children or disabled children who must be cared for by the parent as being a reason why a parent is unable to work.

Although Temporary Assistance to Needy Families (TANF) and other means-tested public assistance benefits are not included in gross income, income may be imputed to these recipients.

In addition to determining potential earnings, the court may impute income to any non-income producing assets of either parent, if significant, other than a primary residence or personal property. Examples of such assets are vacation homes (if not maintained as rental property) and idle land. The current rate determined by the court is the rate at which income may be imputed to such nonperforming assets.

SECTION IV. HEALTH INSURANCE, EXTRAORDINARY MEDICAL EXPENSES, AND CHILDCARE COSTS

Three additional child-rearing expenses—health insurance premiums, extraordinary medical expenses, and childcare expenses—shall be added to the Worksheet and must be considered by the court when determining the total child-support obligation. If either or both parents carry health insurance for the child(ren), incur extraordinary medical expenses for the child(ren), or pay for childcare expenses for one or more children who receive support, the cost of these expenses shall be added to the Worksheet. The court may in turn add one or more of these expenses to the basic child-support obligation as detailed below.

1. Health insurance:

The court shall consider provisions for the children's health care needs through health insurance coverage. Health insurance coverage is considered reasonable if the cost of dependent coverage does not exceed 5% of the gross income of the parent who is to provide coverage. The court may require coverage by one or both parents who can obtain the most comprehensive coverage through an employer or otherwise, and at the most reasonable cost.

If the employer provides some coverage, then only the amount the employee pays shall be used in the calculation of support. This amount may be determined by the difference between self-only coverage and family coverage, or the cost of medical insurance for the child. If the amounts for self-only and family coverage cannot be verified, then the total cost of the premium may be divided by the total number of persons covered by the policy and then multiplied by the number of children in the support order. If the party providing coverage does not incur an additional cost to add the child(ren), then no amount shall be added to the child-support obligation for insurance.

2. Extraordinary Medical Expenses:

Extraordinary medical expenses may be added to the basic child-support obligation and may include uninsured expenses for a single illness or condition. It may include but is not limited to reasonable and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, uninsured chronic health problems, and professional counseling or psychiatric therapy for diagnosed mental disorders (including any reasonable treatment or diagnostic testing needed to diagnose whether there is a recognized mental disorder or disability in the first place).

3. Childcare Costs:

The childcare costs that a parent incurs due to employment or the search for employment is the third add-on to the Worksheet, and they may be considered in the total child-support obligation. Childcare costs must be reasonable, not to exceed the level required to provide quality care for child(ren) from a licensed provider.

SECTION V. COMPUTATION OF CHILD SUPPORT

1. Calculation and Use of Worksheet:

Except as provided in Section II, paragraph 3, Self-Support Reserve, the gross income of both parents shall first be determined and combined. Each parent’s share of the combined total gross income is then determined based on their percentage of the combined income. Next, the basic child-support obligation is determined by looking at the Chart for the parties’ combined income and the number of children they have. A presumptive child-support obligation is then determined by adding the allowed additional monthly child-rearing expenses (including health insurance premiums, extraordinary medical expenses, and childcare expenses). Each parent’s share of additional child-rearing expenses is determined by multiplying the percentage of income they have available for support, which was determined in step 1. The total child-support obligation for each parent is determined by adding each parent’s share of the child-support obligation with their share of allowed additional child-rearing expenses. Lastly, the payor receives a credit for the additional child-rearing expenses that the payor is paying out of pocket, resulting in their presumed child-support order. See the “Forms” Addendum for a sample child-support calculation.

The payor parent shall owe his or her presumed child-support obligation as a money judgment of child support to payee parent.

All orders granting or modifying child support shall contain the court’s determination of both parents’ gross income and shall specify who is the payor parent and who is the payee parent. Any order shall also state the amount of health insurance premiums, extraordinary medical expenses, and childcare expenses allowed in determining the total child-support obligation. See the “Forms” Addendum for sample language that may be used.

2. Shared Custody Adjustment:

In cases of joint or shared custody, where both parents have responsibility of the child(ren) for at least 141 overnights per calendar year, the parties shall complete the Worksheet and Affidavit of Financial Means as they would in any other support case. The court may then consider the time spent by the child(ren) with the payor parent as a basis for adjusting the child-support amount from the amount determined on the Worksheet.³ In particular, in deciding whether to apply an additional credit, the court should consider the presence and amount of disparity between the income of the parties, giving more weight to those disparities in the parties’ income of less than 20% and considering which parent is responsible for the majority of the non-duplicated fixed expenditures, such as routine clothing costs, costs for extracurricular activities, school supplies, and any other similar non-duplicated fixed expenditures.

³The Guidelines intend for the court to deviate (in an amount to be determined) on a case-by-case basis when the payor parent has more than 141 nights with a child(ren). This discretionary deviation shall also apply when the parents each have the child(ren) for approximately 50% of the time.

This discretionary adjustment is based on the number of overnights, or overnight equivalents, that a parent spends with a child pursuant to a court order. For purposes of this section, overnight equivalents are calculated using a method other than overnights if the parent has significant time periods on separate days when the child is in the parent's physical custody, under the direct care of the parent, but does not stay overnight.

3. Split Custody:

When each of the parents have sole custody of one or more of the children, a theoretical support obligation for each parent shall be determined based on the number of children in the other household and offsetting the smaller obligation against the larger one. The parent with the larger obligation pays the difference. To accomplish this calculation, a Worksheet must be completed for each custody arrangement. There must be separate worksheets for the child(ren) who do not live primarily with the other(s).

4. Third-party Custody:

When one or more children are not in the care of either biological parent, a child-support order can issue against each parent. The support amount is calculated by using the Worksheet and computing the obligation of each parent by multiplying each parent's share of income by the total child-support obligation. Both parties shall owe his or her total child-support obligation as a money judgment of child support to the third-party caretaker or guardian. If only one parent is available, that parent's sole income shall be used to determine the total gross income and one hundred percent of the basic child-support obligation shall be given to that parent. If the third-party caretaker or guardian incurs costs for health insurance premiums, extraordinary medical expenses, and childcare expenses, those expenses may be apportioned pro rata between the parents, or apportioned by the court if only one parent is available, as a deviation from these Guidelines.

SECTION VI. MISCELLANEOUS PROVISIONS

1. Allocation of Dependents for Tax Purposes:

Allocation of dependents for tax purposes belongs to the payee parent pursuant to the Internal Revenue Code. However, if allowed by state or federal law, the court shall have the discretion to grant dependency allocation, or any part of it, to the payor parent if the benefit of the allocation to the payor parent substantially outweighs the benefit to the payee parent.

2. Administrative Costs:

The amount paid to the Clerk of the Court or to the Arkansas Clearinghouse for administrative costs pursuant to Ark. Code Ann. § 9-12-312(e)(1)(A), § 9-10-109(b)(1)(A) and § 9-14-804(b) shall not be included as support.

3. Provisions for payment

All child-support orders shall fix the beginning date of the child-

support obligation and the interval (weekly, bi-weekly, semimonthly, or monthly) on which payments shall be made.

Child-support obligations shall be rounded down to the nearest whole dollar. All other computations relating to the determination of a payor's child-support obligation shall use mathematical rules for rounding. If the number you are rounding is followed by 5, 6, 7, 8, or 9, round the number up. For example: 37.5 will be rounded to 38. If the number you are rounding is followed by 0, 1, 2, 3, or 4, round the number down. For example, 37.4 will be rounded to 37. Each parent's share of the basic child-support obligation on Line 5 of the Worksheet should be rounded to two decimal places.

All child-support orders shall include a provision for immediate implementation of income withholding or withholding from a financial institution, absent a finding of good cause not to require immediate income withholding or withholding from a financial institution. All withholding forms shall be filed in the court file and have a security level where it can only be viewed by the parties and attorneys of record. Circuit clerks shall only release the withholding order to parties, their employers, and attorneys of record.

Payment shall be made through the Arkansas Clearinghouse pursuant to Ark. Code Ann. § 9-14-805.

4. Sharing of income information

Parents shall provide proof of income for a previous calendar year whenever requested in writing by certified mail by the other parent, but not more than one (1) time a year.

FORMS ADDENDUM

Sample Calculation

Step 1: The gross income of both parents is determined and combined. Payor parent earns \$2,000 and payee parent earns \$1,000, for a \$3,000 combined gross income. Each parent's share of income is then determined based on their percentage of the combined income. Payor earns 66.66% of the income, and payee earns 33.33% of the income.

Step 2: The basic child-support obligation is determined by looking at the Chart for the \$3,000 combined income and is \$469 for the parties' one child. Each parent's share of the basic child-support obligation is then determined: 66.66% of \$469 is \$312.67 (payor parent), and 33.33% of \$469 is \$156.33 (payee parent).

Step 3: A presumptive child-support obligation is then determined by adding the allowed additional monthly child-rearing expenses including health insurance premiums, extraordinary medical expenses, and childcare expenses. In this case, the court allows \$100 that payor parent is paying for the child's health insurance premium and \$200 that payee parent is paying for childcare expenses, for a total of \$300 for additional child-rearing expenses. Each parent's share of additional child-rearing expenses is determining by multiplying the percentage of

income they have available for support (see step 1) by the total expenses: 66.66% of \$300 is \$200 (payor parent), and 33.33% of \$300 is \$100 (payee parent).

Step 4: The total child-support obligation for each parent is determined by adding each parent's share of the child-support obligation with their share of allowed additional child-rearing expenses. Payor parent (\$312.67 plus \$200) has a total child-support obligation of \$512.67, and payee parent (\$156.33 plus \$100) has a total child-support obligation of \$256.33.

Step 5: The payor receives a credit for the additional child-rearing expenses that he is paying out of pocket. In this example, payor is paying \$100 for the child's health insurance premium, so we deduct \$100 from payor's total child-support obligation of \$512.67. Payor has a presumed child-support order of \$412.67, which shall be rounded down to \$412.

Sample language for a court order based on the calculation provided above:

The court has determined that Plaintiff (payor) earns a gross income of \$2,000 per month and Defendant (payee) earns a gross income of \$1,000 per month. Therefore, the parents' combined gross income is \$3,000 with a basic child-support obligation of \$469 for their one child per the Chart. The court also finds that Plaintiff (payor) is paying for the child's health insurance premium in the amount of \$100 per month and that Defendant (payee) is paying \$200 for childcare expenses, for a total of \$300 for additional child-rearing expenses. Plaintiff (payor) is responsible for 66% of the total obligation (\$312.67 share of basic obligation plus \$200 for expenses) and has a total child-support obligation of \$512.67. Defendant (payee) is responsible for 33% of the total obligation (\$156.33 share of basic obligation plus \$100 for expenses) and has a total child-support obligation of \$256.33. Plaintiff, as the payor, shall receive a \$100 credit for the additional child-rearing expenses that he is paying out of pocket. Plaintiff shall pay \$412 per month to Defendant beginning on March 1, 2020, and he shall continue to cover the child's health insurance premium.

Child Support Worksheet			
Number of children for whom support is sought _____			
Plaintiff is payee/payor (circle one) and Defendant is payee/payor (circle one)			
	Payee	Payor	Combined
PART I: Monthly Income			
Line 1: Child support guidelines income			
Line 1a: Permissible deduction from income			
Line 1b: Another Permissible deduction from income			
Line 2: Income available for support (Line 1 minus Line 1a minus Line 1b)			
Line 3: Each parent's share of income available for support (Each parent's line 2 divided by combined line 2)			
PART II: Basic Obligation			
Line 4: Basic child-support obligation from monthly chart.			
Line 5: Each parent's share of the basic child-support obligation (each parent's line 3 multiplied by combined Line 4)			
PART III: Additional Monthly Child-Rearing Expenses			
Line 6: Cost of the child's health insurance			
Line 7: Cost of the child's extraordinary medical expenses			
Line 8: Cost of work-related child care expenses			
Line 9: Total additional child-rearing expenses (sum of line 6, 7 & 8)			
Line 10: Each parent's share of additional child-rearing expenses (each parent's line 3 multiplied by combined Line 9)			
PART IV: Monthly Child-Support Order			
Line 11: Total child-support obligation (each parent's line 5 plus line 10)			
Line 12: Credit for additional child-rearing expenses (obligor's line 9 only)			
Line 13: Presumed child-support order (Line 11 minus line 12 for obligor only)			

Family Support Chart of Basic Child Support Obligations						
(Self-Support Reserve = \$900/month, Minimum Order = \$125 per month)						
Combined Gross Monthly Income ⁴	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
1-1050	125	125	125	125	125	125
1100	140	142	144	146	148	150
1150	175	178	180	183	185	188
1200	203	213	216	219	222	225
1250	211	249	252	256	259	263
1300	218	284	288	292	296	300
1350	226	320	324	329	333	338
1400	234	343	360	365	370	375
1450	241	354	396	402	407	413
1500	249	365	432	438	444	450
1550	256	376	454	475	481	488
1600	264	387	468	511	518	525
1650	271	398	481	537	555	563
1700	279	409	494	552	592	600
1750	286	420	507	567	623	638
1800	293	431	520	581	639	675
1850	301	442	534	596	656	713
1900	308	453	547	611	672	730
1950	316	463	560	626	688	748
2000	323	474	573	640	704	765
2050	330	485	586	654	720	783
2100	338	496	599	669	736	800
2150	345	506	612	683	752	817
2200	352	517	625	698	768	834
2250	360	528	638	712	784	852
2300	367	538	651	727	799	869
2350	374	549	664	741	815	886
2400	381	560	677	756	831	904
2450	389	571	689	770	847	921
2500	396	581	702	785	863	938
2550	403	592	715	799	879	955
2600	411	603	728	814	895	973
2650	418	613	741	828	911	990
2700	425	624	754	842	927	1007
2750	433	635	767	857	943	1025

⁴ The Combined Gross Monthly Income does not apply in cases where the child support amount is in the blue shaded area.

2800	440	646	780	871	958	1042
2850	447	656	793	886	974	1059
2900	454	667	806	900	990	1076
2950	462	678	819	915	1006	1094
3000	469	688	832	929	1022	1111
3050	476	699	845	944	1038	1128
3100	484	710	858	958	1054	1146
3150	491	720	871	972	1070	1163
3200	498	731	883	987	1085	1180
3250	505	742	896	1001	1101	1197
3300	512	752	909	1015	1117	1214
3350	520	763	922	1029	1132	1231
3400	527	773	934	1044	1148	1248
3450	534	784	947	1058	1164	1265
3500	541	794	960	1072	1180	1282
3550	548	805	973	1087	1195	1299
3600	556	816	986	1101	1211	1316
3650	563	826	998	1115	1227	1333
3700	570	837	1011	1129	1242	1350
3750	577	847	1024	1144	1258	1367
3800	584	858	1037	1158	1274	1385
3850	592	868	1049	1172	1289	1402
3900	599	879	1062	1186	1305	1419
3950	606	890	1075	1201	1321	1436
4000	612	899	1086	1213	1335	1451
4050	619	908	1097	1226	1348	1465
4100	625	917	1108	1238	1362	1480
4150	631	926	1119	1250	1375	1495
4200	637	935	1130	1263	1389	1510
4250	644	945	1141	1275	1402	1524
4300	650	954	1152	1287	1416	1539
4350	656	963	1163	1300	1429	1554
4400	662	972	1174	1312	1443	1569
4450	668	981	1185	1324	1457	1583
4500	675	990	1197	1337	1470	1598
4550	681	999	1208	1349	1484	1613
4600	687	1008	1219	1361	1497	1628
4650	693	1018	1230	1373	1511	1642
4700	699	1027	1241	1386	1524	1657
4750	706	1036	1252	1398	1538	1672
4800	712	1045	1263	1410	1552	1686
4850	718	1054	1274	1423	1565	1701
4900	724	1063	1285	1435	1579	1716
4950	731	1072	1296	1447	1592	1731
5000	737	1081	1307	1460	1606	1745
5050	743	1091	1318	1472	1619	1760
5100	749	1100	1329	1484	1633	1775
5150	755	1109	1340	1497	1646	1790

5200	762	1118	1351	1509	1660	1804
5250	768	1127	1362	1521	1674	1819
5300	774	1136	1373	1534	1687	1834
5350	780	1145	1384	1546	1701	1849
5400	785	1152	1392	1555	1710	1859
5450	788	1154	1394	1557	1712	1861
5500	790	1156	1395	1559	1715	1864
5550	793	1159	1397	1561	1717	1866
5600	795	1161	1399	1563	1719	1869
5650	798	1163	1401	1565	1721	1871
5700	800	1165	1403	1567	1724	1873
5750	802	1167	1405	1569	1726	1876
5800	805	1170	1406	1571	1728	1878
5850	807	1172	1408	1573	1730	1881
5900	810	1174	1410	1575	1733	1883
5950	812	1176	1412	1577	1735	1886
6000	815	1178	1414	1579	1737	1888
6050	817	1181	1416	1582	1740	1891
6100	821	1185	1421	1587	1746	1897
6150	824	1189	1425	1592	1751	1904
6200	827	1193	1430	1598	1757	1910
6250	830	1197	1435	1603	1763	1916
6300	834	1201	1440	1608	1769	1923
6350	837	1205	1444	1613	1775	1929
6400	840	1209	1449	1619	1781	1936
6450	843	1214	1454	1624	1787	1942
6500	847	1218	1459	1629	1792	1948
6550	850	1222	1464	1635	1798	1955
6600	853	1226	1468	1640	1804	1961
6650	856	1230	1473	1645	1810	1967
6700	860	1234	1478	1651	1816	1974
6750	865	1240	1485	1659	1825	1984
6800	870	1247	1494	1669	1835	1995
6850	875	1254	1502	1678	1846	2006
6900	880	1261	1510	1687	1856	2017
6950	886	1268	1519	1696	1866	2028
7000	891	1274	1527	1705	1876	2039
7050	896	1281	1535	1715	1886	2050
7100	901	1288	1543	1724	1896	2061
7150	907	1295	1552	1733	1907	2072
7200	912	1302	1560	1742	1917	2083
7250	917	1308	1568	1752	1927	2095
7300	923	1315	1576	1761	1937	2106
7350	928	1322	1585	1770	1947	2117
7400	932	1328	1592	1778	1956	2126
7450	936	1334	1598	1785	1964	2135
7500	939	1340	1605	1793	1972	2143
7550	943	1345	1611	1800	1980	2152

7600	947	1351	1618	1807	1988	2161
7650	950	1357	1624	1814	1996	2169
7700	954	1362	1631	1821	2004	2178
7750	957	1368	1637	1828	2011	2186
7800	961	1373	1643	1835	2019	2195
7850	964	1379	1649	1842	2027	2203
7900	968	1384	1656	1849	2034	2211
7950	971	1390	1662	1856	2042	2220
8000	975	1395	1668	1863	2050	2228
8050	978	1401	1674	1870	2057	2236
8100	980	1402	1676	1872	2060	2239
8150	982	1404	1678	1875	2062	2242
8200	984	1406	1681	1877	2065	2245
8250	986	1408	1683	1880	2068	2248
8300	988	1410	1685	1882	2070	2250
8350	989	1411	1687	1885	2073	2253
8400	991	1413	1689	1887	2076	2256
8450	993	1415	1691	1889	2078	2259
8500	995	1417	1694	1892	2081	2262
8550	997	1419	1696	1894	2084	2265
8600	999	1420	1698	1897	2086	2268
8650	1001	1422	1700	1899	2089	2271
8700	1002	1424	1702	1902	2092	2274
8750	1005	1427	1705	1905	2095	2278
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8900	1014	1438	1718	1919	2111	2294
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9000	1020	1445	1726	1928	2121	2305
9050	1023	1449	1730	1933	2126	2311
9100	1027	1453	1735	1937	2131	2317
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9300	1039	1468	1751	1956	2152	2339
9350	1042	1472	1755	1961	2157	2344
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9450	1048	1478	1763	1970	2167	2355
9500	1050	1480	1767	1974	2171	2360
9550	1053	1483	1770	1977	2175	2364
9600	1055	1485	1774	1981	2180	2369
9650	1057	1487	1777	1985	2184	2374
9700	1060	1489	1781	1989	2188	2379
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9800	1064	1493	1788	1997	2197	2388
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9900	1069	1497	1795	2005	2206	2397
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10100	1078	1506	1809	2021	2223	2416
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10300	1088	1514	1823	2037	2240	2435
10350	1090	1516	1827	2040	2245	2440
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10450	1095	1521	1834	2049	2253	2449
10500	1098	1526	1839	2054	2260	2456
10550	1102	1531	1844	2060	2266	2463
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10750	1116	1552	1866	2084	2292	2492
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11100	1141	1589	1903	2125	2338	2541
11150	1145	1595	1908	2132	2345	2549
11200	1149	1600	1914	2138	2352	2557
11250	1153	1606	1920	2145	2359	2564
11300	1156	1612	1926	2151	2366	2572
11350	1160	1618	1931	2157	2373	2580
11400	1164	1623	1937	2164	2380	2587
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11550	1176	1641	1955	2183	2402	2611
11600	1180	1646	1960	2190	2409	2618
11650	1184	1652	1966	2196	2416	2626
11700	1187	1658	1972	2203	2423	2634
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11800	1195	1668	1984	2216	2437	2649
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12550		1248	1734	2073	2316	2547	2769
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12700		1259	1748	2091	2335	2569	2792
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12800		1266	1756	2103	2349	2584	2808
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13300		1302	1801	2162	2415	2657	2888
13350		1305	1805	2168	2422	2664	2896
13400		1309	1809	2174	2428	2671	2904
13450		1313	1814	2180	2435	2679	2912
13500		1316	1818	2186	2442	2686	2920
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13600		1323	1827	2198	2455	2701	2936
13650		1326	1831	2202	2460	2706	2942
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13750		1331	1838	2211	2469	2716	2952
13800		1334	1841	2215	2474	2721	2958
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14800	1382	1903	2288	2556	2811	3056
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15200	1401	1926	2316	2587	2846	3094
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15350	1408	1935	2327	2599	2859	3108
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15450	1412	1941	2334	2607	2868	3118
15500	1414	1944	2338	2611	2872	3122
15550	1417	1947	2341	2615	2877	3127
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15650	1421	1953	2348	2623	2886	3137
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15750	1426	1959	2356	2631	2894	3146
15800	1428	1962	2359	2635	2899	3151
15850	1431	1965	2363	2639	2903	3156
15900	1433	1968	2366	2643	2907	3160
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16000	1438	1974	2373	2651	2916	3170
16050	1440	1977	2377	2655	2920	3174
16100	1442	1980	2380	2659	2925	3179
16150	1445	1983	2384	2663	2929	3184
16200	1447	1986	2387	2667	2934	3189
16250	1449	1989	2391	2671	2938	3193
16300	1452	1992	2395	2675	2942	3198
16350	1454	1995	2398	2679	2947	3203
16400	1456	1998	2402	2683	2951	3208
16450	1459	2001	2405	2686	2955	3212
16500	1462	2004	2408	2690	2959	3216
16550	1464	2007	2412	2694	2963	3221
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16650	1470	2012	2418	2701	2971	3230
16700	1472	2015	2421	2705	2975	3234
16750	1475	2018	2425	2708	2979	3239
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17000	1488	2033	2441	2727	3000	3261
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17100	1494	2038	2448	2734	3008	3269
17150	1496	2041	2451	2738	3012	3274

17200	1499	2044	2455	2742	3016	3278
17250	1501	2047	2457	2745	3019	3282
17300	1504	2050	2461	2748	3023	3286
17350	1506	2052	2464	2752	3027	3291
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17450	1512	2058	2470	2759	3035	3299
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17550	1517	2064	2477	2767	3043	3308
17600	1520	2067	2480	2770	3047	3312
17650	1522	2070	2483	2774	3051	3317
17700	1525	2072	2487	2778	3055	3321
17750	1527	2075	2490	2781	3059	3325
17800	1530	2078	2493	2784	3063	3329
17850	1532	2081	2496	2788	3067	3333
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18000	1540	2089	2505	2798	3078	3346
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18100	1545	2094	2511	2805	3086	3354
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18200	1550	2100	2518	2812	3093	3362
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18400	1560	2110	2530	2826	3109	3379
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18650	1572	2124	2545	2843	3128	3400
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18750	1577	2129	2552	2850	3135	3408
18800	1580	2132	2555	2854	3139	3412
18850	1582	2135	2558	2857	3143	3416
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18950	1587	2140	2564	2864	3150	3424
19000	1590	2143	2567	2867	3154	3429
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19400	1609	2165	2592	2895	3185	3462
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21000	1686	2251	2689	3004	3304	3592
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21100	1689	2255	2695	3010	3311	3599
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22000	1716	2298	2742	3063	3369	3662
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22250	1724	2310	2755	3077	3385	3680
22300	1726	2312	2758	3080	3388	3683
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22450	1730	2319	2766	3089	3398	3694
22500	1732	2321	2768	3092	3401	3697
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22800	1741	2336	2784	3110	3421	3718
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22950	1745	2343	2792	3118	3430	3729
23000	1747	2345	2794	3121	3433	3732
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23100	1750	2350	2800	3127	3440	3739
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23300	1756	2359	2810	3139	3453	3753
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23400	1759	2364	2815	3145	3459	3760
23450	1761	2366	2818	3148	3462	3764
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23550	1764	2371	2823	3154	3469	3771
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23650	1767	2376	2829	3159	3475	3778
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23750	1770	2380	2834	3165	3482	3785
23800	1771	2383	2836	3168	3485	3788
23850	1773	2385	2839	3171	3488	3792
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23950	1776	2390	2844	3177	3495	3799
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24200	1783	2402	2857	3192	3511	3816
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24650	1797	2423	2881	3218	3540	3848
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24800	1802	2430	2889	3227	3550	3858
24850	1803	2432	2892	3230	3553	3862
24900	1805	2435	2894	3233	3556	3865
24950	1806	2437	2897	3236	3559	3869
25000	1808	2440	2899	3239	3563	3872
25050	1809	2442	2902	3242	3566	3876
25100	1811	2444	2905	3245	3569	3879
25150	1812	2447	2907	3247	3572	3883
25200	1814	2449	2910	3250	3575	3886
25250	1815	2451	2913	3253	3579	3890
25300	1817	2454	2915	3256	3582	3893
25350	1818	2456	2918	3259	3585	3897
25400	1820	2458	2920	3262	3588	3901
25450	1821	2461	2923	3265	3592	3904
25500	1823	2463	2926	3268	3595	3908
25550	1825	2466	2928	3271	3598	3911
25600	1826	2468	2931	3274	3601	3915
25650	1828	2470	2934	3277	3604	3918
25700	1829	2473	2936	3280	3608	3922
25750	1831	2475	2939	3283	3611	3925
25800	1832	2477	2941	3286	3614	3929
25850	1834	2480	2944	3289	3617	3932
25900	1835	2482	2947	3291	3621	3936
25950	1837	2484	2949	3294	3624	3939
26000	1838	2487	2952	3297	3627	3943
26050	1840	2489	2955	3300	3630	3946
26100	1841	2492	2957	3303	3633	3950
26150	1843	2494	2960	3306	3637	3953
26200	1844	2496	2962	3309	3640	3957
26250	1846	2499	2965	3312	3643	3960
26300	1847	2501	2968	3315	3646	3964
26350	1849	2503	2970	3318	3650	3967
26400	1850	2506	2973	3321	3653	3971
26450	1852	2508	2976	3324	3656	3974
26500	1853	2510	2978	3327	3659	3978
26550	1855	2513	2981	3330	3663	3981
26600	1856	2515	2983	3333	3666	3985
26650	1858	2518	2986	3335	3669	3988
26700	1860	2520	2989	3338	3672	3992
26750	1861	2522	2991	3341	3675	3995

26800	1863	2525	2994	3344	3679	3999
26850	1864	2527	2997	3347	3682	4002
26900	1866	2529	2999	3350	3685	4006
26950	1867	2532	3002	3353	3688	4009
27000	1869	2534	3004	3356	3692	4013
27050	1870	2536	3007	3359	3695	4016
27100	1872	2539	3010	3362	3698	4020
27150	1873	2541	3012	3365	3701	4023
27200	1875	2544	3015	3368	3704	4027
27250	1876	2546	3018	3371	3708	4030
27300	1878	2548	3020	3374	3711	4034
27350	1879	2551	3023	3377	3714	4037
27400	1881	2553	3025	3379	3717	4041
27450	1882	2555	3028	3382	3721	4044
27500	1884	2558	3031	3385	3724	4048
27550	1885	2560	3033	3388	3727	4051
27600	1887	2562	3036	3391	3730	4055
27650	1888	2565	3039	3394	3734	4058
27700	1890	2567	3041	3397	3737	4062
27750	1892	2570	3044	3400	3740	4065
27800	1893	2572	3046	3403	3743	4069
27850	1895	2574	3049	3406	3746	4072
27900	1896	2577	3052	3409	3750	4076
27950	1898	2579	3054	3412	3753	4079
28000	1899	2581	3057	3415	3756	4083
28050	1901	2584	3060	3418	3759	4086
28100	1902	2586	3062	3420	3763	4090
28150	1904	2588	3065	3423	3766	4093
28200	1905	2591	3067	3426	3769	4097
28250	1907	2593	3070	3429	3772	4100
28300	1908	2596	3073	3432	3775	4104
28350	1910	2598	3075	3435	3779	4107
28400	1911	2600	3078	3438	3782	4111
28450	1913	2603	3081	3441	3785	4114
28500	1914	2605	3083	3444	3788	4118
28550	1916	2607	3086	3447	3792	4121
28600	1917	2610	3088	3450	3795	4125
28650	1919	2612	3091	3453	3798	4128
28700	1920	2614	3094	3456	3801	4132
28750	1922	2617	3096	3459	3804	4135
28800	1924	2619	3099	3462	3808	4139
28850	1925	2622	3102	3464	3811	4142
28900	1927	2624	3104	3467	3814	4146
28950	1928	2626	3107	3470	3817	4150
29000	1930	2629	3109	3473	3821	4153
29050	1931	2631	3112	3476	3824	4157
29100	1933	2633	3115	3479	3827	4160
29150	1934	2636	3117	3482	3830	4164

29200		1936	2638	3120	3485	3834	4167
29250		1937	2640	3123	3488	3837	4171
29300		1939	2643	3125	3491	3840	4174
29350		1940	2644	3127	3493	3842	4177
29400		1941	2646	3129	3495	3844	4179
29450		1942	2647	3130	3496	3846	4181
29500		1943	2648	3131	3498	3848	4183
29550		1943	2649	3133	3499	3850	4185
29600		1944	2650	3134	3501	3851	4186
29650		1945	2652	3135	3502	3853	4188
29700		1946	2653	3137	3504	3855	4190
29750		1947	2654	3138	3505	3857	4192
29800		1948	2655	3140	3507	3859	4194
29850		1949	2656	3141	3508	3860	4196
29900		1950	2658	3142	3510	3862	4198
29950		1951	2659	3144	3512	3864	4200
30000		1952	2660	3145	3513	3866	4202

IN THE CIRCUIT COURT OF _____ COUNTY, ARKANSAS

(Domestic Relations Division)

_____Division

Plaintiff

v. Case No. _____DR_____

Defendant

AFFIDAVIT OF FINANCIAL MEANS

Name: _____, being duly sworn, says under penalty of perjury, that he/she has prepared or approved this financial statement, and that the following information and attachments (including income verification as required by page 6) are complete, true, and correct.

Date

Signature

Subscribed and sworn to before me on this ____ day of _____ 20__.

Notary Public

My commission expires: _____.

MY INCOME

1.	How often are you paid? ____ weekly ____ bi-weekly (every two weeks—26 times a year) ____ monthly ____ bi-monthly (twice a month—24 times a year) ____ other —Explain (attach an exhibit if necessary): _____
2.	Gross Pay: \$ _____

INCOME

3	Income:	Amount:	Source	Frequency
	Gross wages from employment,			
3.1	contract labor, etc.			
3.2	Bonuses or incentive pay not reflected on page 2:			
3.3	Other court-ordered income such as alimony/child support paid to you:			
3.4	Payments from a settlement or annuity:			
3.5	Regular gifts from relatives or friends:			
3.6	Investment income such as rent payments to you:			
3.7	Stock dividends or bond payments:			
3.8	Regular payments to you or on your behalf from a Trust:			
3.9	Other:			
3.10	TOTAL MONTHLY INCOME:		\$	

OTHER AVAILABLE FUNDS

4	ASSET	AMOUNT	SOURCE
4.1	Cash on hand, and in bank accounts:		
4.2	Trust fund assets held on your behalf:		
4.3	Stocks, bonds, mutual funds:		
4.4	Other (i.e. 401-K, retirement, etc):		
4.5	TOTAL:	\$	

MY CURRENT MONTHLY EXPENSES *

5.	Expense:	Amount:		Expense:	Amount:
a.	Health Insurance- for child only	\$	n.	Health Insurance- excludes amount in "a"	\$
b.	Extraordinary medical expenses for child in this case	\$	o.	Non-covered medical for self or child not involved in this case	\$
c.	Childcare for child in this case	\$	p.	Childcare for child not involved in this case	\$
d.	Rent/house payment	\$	q.	Car payment	\$
e.	Media Services, e.g. Cable/Satellite, Internet	\$	r.	Car Insurance	\$
f.	Telephone	\$	s.	Car fuel and maintenance	\$
g.	Gas, water, trash, & electricity	\$	t.	Lawn care	\$
h.	Union dues	\$	u.	Charitable giving	\$
i.	Pension plan	\$	v.	Household Expenses	\$
j.	401(k) payments	\$	w.	Dry cleaning	\$
k.	Gamishments	\$	x.	Life Insurance:	\$
l.	Cigarettes	\$	y.	Other:	\$
m.	Alcohol	\$	z.	TOTAL	\$

* Place a check mark by all expenses which you are not currently paying.

MINOR CHILDREN

6.		Number of children:
a.	Number of minor children I have with opposing party:	#
b.	Number of <i>other</i> minor children I have:	#
c.	Names of minor children involved in this case:	AGE
1.		
2.		
3.		
4.		

CREDITORS & DEBTS

7. Debts in the names of **BOTH PARTIES** are:

	Creditor:	Total amount owed:	Monthly payment:
a.		\$	\$
b.		\$	\$
c.		\$	\$
d.		\$	\$
e.		\$	\$
f.		\$	\$
g.		\$	\$
	Totals:	\$	\$

8. Debts only in my name:

	Creditor:	Total amount owed:	Monthly payment:
a.		\$	\$
b.		\$	\$
c.		\$	\$
d.		\$	\$
e.		\$	\$
	Totals:	\$	\$

9. Debts only in the name of the other party:

	Creditor:	Total amount owed:	Monthly payment:
a.		\$	\$
b.		\$	\$
c.		\$	\$
d.		\$	\$
e.		\$	\$
	Totals:	\$	\$

10. SUMMARY OF ABOVE DEBT TABLES:

	Summary of Debts:	Total Owed:	Total Monthly Payments:
a.	Joint Debts:	\$	\$
b.	My Debts:	\$	\$
c.	Other Party's Debts:	\$	\$

ACKNOWLEDGEMENT OF RESPONSIBILITIES AND CONSEQUENCES

I, _____, understand that I must comply with the following. I acknowledge and agree to each provision by initialing each paragraph below.

_____ Both parties must complete and exchange this six-page affidavit at least three days before a court hearing where financial matters are at issue. The affidavit must be provided to opposing counsel, if a party is represented, or directly to a self-represented litigant.

_____ Both parties must supply the original notarized affidavit to the court.

_____ If I am employed, I must attach copies of my last three paystubs to this affidavit.

_____ If I am self-employed, I must attach copies of my last two federal and state tax returns, including all schedules, to this affidavit.

_____ Before each court hearing where financial matters are at issue, I will review this document and provide updated information to the other party and to the court.

_____ I understand that the cost of dependent health insurance coverage is the difference between self-only and self with dependents or family coverage or the cost of adding the child(ren) to existing coverage.

_____ I understand that failing to comply with these provisions, or deliberately attempting to mislead the court or the opposing party, may result in my being held in contempt of court, being fined, being ordered to pay attorney's fees, and/or being sentenced up to 6 months in jail, and that serious violations can result in prosecution for felony perjury—punishable by 3 to 10 years in prison.

Date

Signature

I certify that I have reviewed this affidavit with my client and advised him or her of the importance of providing true, correct, complete answers and the required exhibits.

Date

Attorney

Form Revised 4/2020

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